SELECTIONS FROM THE DEBATES

ON THE

REFORM OF COMPANY LAW IN THE CENTRAL ASSEMBLY AND PARLIAMENT IN 1936 AND 1954-55

Purposes and Objectives of the Provisions of the Relevant Bills as explained by Government Spokesmen

RESEARCH & STATISTICS DIVISION

Department of Company Law Administration
Ministry of Commerce & Industry
Government of India

NEW DELHI

The following are the other publications of the Department of Company Law Administration:—

(*Available from the Manager of Publications, Government of India, Civil Lines, Delhi-8.*)

Annual Report on the Working and Administration of the Companies Act, 1956, for the year ended March 31, 1959—Rs. 2·00.

A Layman's Guide to the Indian Company Law in five languages:

(i) English—Rs. 2·25, (ii) Hindi—Rs. 2·25, (iii) Bengali—Rs. 2·75, (iv) Marathi*, (v) Tamil*.

Managing Agencies in India (First Round: Basic Facts) by Raj K. Nigam:

(i) Comprehensive Edition—Rs. 26·50.

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The Present and Future Role of Shareholders' Associations in India by Raj K. Nigam*.

(continued on back page)

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NOTE: The responsibility for the selection of passages from the Parliamentary debates and for the commentaries thereon is of the Editor personally, and not of the Department of Company Law Administration under whose auspices this compilation is published.

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FOREWORD

The present compilation contains selected extracts from Parliamentary debates on two major legislative measures relating to the revision of the Companies Act in the past. Part I of the compilation contains extracts from the debates which took place in the old Legislative Assembly and the Council of State on the Indian Companies (Amendment) Bill of 1936. This Bill sought to bring the Companies Act of 1913 into line with the provisions of the English Companies Act of 1929 and also to provide for better control of the managing agency system which till then had not been brought within the scope of the Companies Act, but had been left to be regulated by the general Law of Contract. Part II of the compilation contains extracts from the debates on the Companies Bill of 1953 which, unlike the Act of 1936, was both an amending and consolidating measure, and introduced several far-reaching changes in some of the basic concepts underlying the law, which Parliament considered to be in conformity with the ends of the country's accepted economic and social policies. The need for a handy compilation containing a fairly representative summary of the discussions on the major issues of policy relating to the working of these earlier enactments was suggested by the discussions on the Companies (Amendment) Bill of 1959 in the Joint Committee of the two Houses of Parliament. It was felt that the background information and knowledge provided by the earlier debates on several aspects of the Companies Act might considerably facilitate the work of the Joint Committee of Parliament and enable the provisions of the amending Bill to be viewed in their proper light, in the context of the pattern of development of Company Law since 1936 onwards.

Apart from the circumstances in which this compilation was conceived, it is to be hoped that it will also be of interest and use to all those, whether in business or administration, who take a long view of corporate enterprise and are interested in its long-term expansion and development. No economic or social institution, much less an institution like the joint stock company, which is necessarily sensitive to the climate of opinion in which it has to operate, and which, in its turn, impinges heavily on the economic order of a country, can function for any length of time in isolation from the main currents of a country's basic economic and social policies. It is as much the historic task of Company Law, as it must be the responsibility of the best elements in company management, to effect such speedy adjustments in the structure and mechanics of company management from time to time, as would bring them into harmony with changes in the basic economic policies of a country or in its over-riding operational environment. Not the least important aspect of the debates reproduced in this compilation is this sense of perspective which they bring to the study and appraisal of this subject. It is of more than a passing interest to read the following observations of Pandit Govind Ballabh Pant made as early as in 1936, which still carry a strangely contemporary ring about them :—

> "In short, my submission is this", he said, "that industry is not an isolated concern of the shareholders and managing

agents alone. It reacts on the entire people of the country, on their economic condition, on employment, on standard of living, on everything conducive to the material well-being. When it is coupled with the policy of discrimination, then it becomes the direct concern of the people....."

Almost identical views were expressed, about twenty years later, by Shri C. D. Deshmukh, when he piloted the Companies Bill of 1953 through Parliament. If the present compilation helps to introduce this sense of perspective into current thinking and discussions on the problems of the corporate sector, and to facilitate the better appreciation of the aims and objects underlying the basic law relating to companies, it will have amply served its purpose.

The compilation owes a great deal to the energy and the efforts of Dr. Raj K. Nigam, Director of the Division of Research & Statistics in the Department of Company Law Administration and of his colleagues and co-workers in this Division. Although the Department is not necessarily committed to the commentaries, which accompany the selections from the speeches reproduced in the compilation, the thanks of the Department are due to the officers and staff of the Research & Statistics Division for the time and trouble they have taken to prepare it.

D. L. MAZUMDAR,
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NEW DELHI;
Dated, the 18th April, 1960.

EDITOR'S NOTE

In recent years, the present Companies Act, 1956, has attracted wide public attention both for its massive size and for its basic importance in regulating the structure and working of a class of business organisations, which are the principal instruments or media of industrial and commercial activities in any modern country, *viz.*, joint stock companies. Apart from its purely regulatory provisions, the Act contains several provisions which embody many aspects of Government's accepted economic and social policies and seek to give effect to them in so far as it is possible for this Act to do so.

The present Act, in its Bill form, was introduced in the Lok Sabha on the 2nd September, 1953, by the then Finance Minister, Shri C. D. Deshmukh who steered the Bill through the two Houses of Parliament between 1953 and 1955. Apart from the brief discussion which took place at the time of the introduction of this Bill in 1953, and later when it was moved for reference to the Joint Committee in 1954, there was a very detailed debate on the provisions of the Bill as it emerged from the Joint Committee in 1955, lasting for about 100 hours in the two Houses of Parliament, in which more than 150 Members of Parliament participated. During the debate, a detailed exposition of Government policies underlying the Bill and interpretations of the more complex clauses in it was given by the then Finance Minister and his colleagues in the Ministry of Finance.

A selection of 136 important observations made by the official spokesmen during the aforesaid debate has been made by the Editor in Part II of this compilation under eight short sections, *viz.*, (1) Historical Background and Objectives of the Companies Act, 1956, (2) Administration of the Companies Act, 1956, (3) Restrictions and Powers under the Companies Act, 1956, (4) Provisions concerning Directors and Board of Directors, (5) Managing Agency System, (6) Secretaries and Treasurers, (7) Managerial Remuneration, and (8) Miscellaneous. On a few important controversial matters, apart from the Ministers' observations, the views of some of the leading Members of Parliament are also included in the compilation.

In order to facilitate the understanding of the major issues of policy dealt with during the Parliamentary debate in 1955 in the perspective of history, some important extracts from the speeches delivered in the old Central Assembly and the Council of State during the debate on the Companies (Amendment) Bill in 1936 have also been given in Part I of this compilation. As in 1955, the debate on the Companies Amendment Bill at that time was also very detailed; as many as 75 members of the old Central Assembly and the Council of State participated in it. A comparative study of the points expressed in 1936 by the then Government of India and the approach of the present Government in 1955 may help the discerning reader of the compilation to measure the ground which the country has traversed in its social and economic thinking relating to the place of the corporate sector in its economy. A careful comparison of the old and contemporary views also shows that whereas the Companies Act in the past, like many other statutes of the land, aimed at settling

the rights of the various parties, viz., shareholders, creditors, company management, etc. with the minimum possible interference from the executive Government, the new Company Law of 1956 goes much beyond this object in avowedly recognising the need for the intervention of the State at significant parts in this complicated nexus of relationship in ensuring that the working and management of companies was not only just, equitable and fair to the directly interested parties like shareholders and creditors, but also was in accord with the general interests of the community as a whole. It may be of interest to recall, in this context, that the official view in 1936 was expressed by the then Law Member of the Governor-General's Executive Council, the late Sir Nripendra Nath Sircar and the late Shri Susil Chandra Sen, a leading Solicitor from Calcutta whereas non-official opinion on many of the controversial issues of those times was expressed by the late Shri Bhulabhai J. Desai, the late Shri S. Satyamurti, Shri M. Ananthasayanam Ayyangar and Pandit Govind Ballabh Pant some of whose thinking of those days seems to be reflected in the relevant provisions of the present Act

The compilation, prepared from a study of about 3,000 printed pages of the volumes of the Indian '*Hansard*', is by no means exhaustive and does not claim to cover all issues and points of view discussed and debated in 1936 or 1954-55, but it is hoped that it will prove to be a reasonably comprehensive conspectus of the more important of the problems of company organisation and management.

NEW DELHI;
Dated, the 5th April, 1960.

RAJ K. NIGAM,
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PART I

PART I

DEBATE ON THE INDIAN COMPANIES (AMENDMENT) BILL, 1936

The Indian Companies (Amendment) Bill of 1936 was sponsored by the then Government of India to deal with six major issues in respect of which suitable provisions had to be drafted and incorporated in the Indian Companies Act of 1913 so that the evils that pervaded the corporate sector in those days and that seemed to threaten to slow down the pace of industrial advancement of the country by shaking the confidence of the general investing public in the institution of joint stock companies, might be arrested and curbed. Following were the six major questions on which the Government spokesmen, the late *Sir Nripendra Nath Sircar* and the late *Shri Susil Chandra Sen* and other prominent members of the Legislative Assembly like the late *Shri Bhulabhai J. Desai*, the late *Shri S. Satyamurti, Pandit Govind Ballabh Pant* and *Shri M. Ananthasayanam Ayyanger* spoke in the Central Assembly and the Council of State:—

(1) the question of prevention of 'mushroom companies' and the suppression of fraudulent companies;

(2) the question of better disclosures to shareholders;

(3) the giving of further powers to shareholders;

(4) providing for check over what was called the autocracy of directors;

(5) the prevention of abuses of the managing agency system; and

(6) provisions relating to banking companies.

A collection of about 40 important extracts from the speeches of the above mentioned persons dealing with the more important policy matters is made in this Part.

1·1. Company Law: Need for revision

Changes in company law are required to be made from time to time to deal with the economic and industrial conditions prevailing at different times in the country. The law has to keep step with the dynamic and changing character of the society. Echoing these views, *Pandit Govind Ballabh Pant* spoke as follows in the Legislative Assembly in 1936:—

> Society is dynamic: it changes and progresses, and that implies the replacement and supersession of the existing state of things by one expected to be better, more salutary and more wholesome. We outgrow old systems as we acquire more of experience and wisdom and thus alone the world lives, grows and advances. So, we should not think that a Bill of this nature is peculiar to

this country alone. But we must remember that we have our own problems, and since 1913 there has been considerable experience and growth in the matter of companies in our country. The expansion that has taken place since the year 1913 has created new problems: and we have besides the system of codification of laws. Here our system does not grow like the bark of the tree, as in the case of common law, but we have to fit up our codes like our coats, as times change and as we grow and new problems face us. So what we are doing today is nothing more than a provision for a stage in the progress of industrial organisation.

(*Legislative Assembly*, 8-9-1936, *vide Debates, Vol. VI, No 7, pp.* 22-23).

* * *

1·2. Joint Stock Companies: Repercussion of their activities on the society.

The activities of companies are not only a matter of concern for their respective shareholders, creditors, directors or managing agents, but are also of interest to the general public and, therefore, there is a need to keep them under proper watch and study. In the following two passages *Pandit Govind Ballabh Pant* stressed the overbearing importance of the joint stock companies:—

In view of the protective policy that we have in our country, it is necessary that the cost of production should be reduced and the intermediaries should not be allowed excessive profits, so that the industries may run economically, the level of protection may be brought down, and the progress of industries may be accelerated. So, irrespective of the fact that primarily it is the concern of the shareholders, the directors and the managing agents, every company is ultimately also the affair of the entire general public. For, whatever they do, reacts on the general public.

(*Legislative Assembly*, 8-9-1936, vide *Debates, Vol. VI, No.* 7, *p.* 23).

* * *

1·3.

In short, my submission is this, that industry is not an isolated concern of the shareholders and the managing agents alone. It reacts on the entire people in the country, on their economic condition, on employment, on standard of living, on everything that conduces to material well-being. When it is coupled with a policy of discriminating protection then it becomes the direct concern of the people.

(*Legislative Assembly*, 25-9-1936, vide *Debates, Vol. VII, No.* 9, *p.* 20).

* * *

1·4. Company Law: Its fundamental basis.

The Government, till 1936, abstained from taking powers under the Companies Act to interfere with the relations and the agreements subsisting between the directors and the managing agents on the one hand and the companies under their management on the other. They left these matters to be decided by the general law of contract rather than governing them through the provisions of the Companies Act. As such, under the Act of 1913, directors and managing agents enjoyed very wide powers and priviliges for many of which only a formal consent of the shareholders in the annual general meeting was required. The Amendment Act of 1936, *Pandit Pant* thought, recognised the new principle of social welfare in place of the old principle of sanctity of contract, and as a result, a number of obligations and restrictions had been imposed upon the directors and the managing agents in the new Amendment Act. The spirit of the new provisions of the Amendment Act of 1936, as interpreted by him, was expressed by *Pandit Pant* in the following words:—

> I hope the House will examine the Bill with a view to improving it and so as to safeguard the interests of the public. Above all, these interests must receive the greatest amount of consideration here. The Bill has accepted the principle of social welfare in place of the exploded principle of sanctity of a formal contract. And taking that as the basic principle let us apply our minds to this Bill with a view to getting the maximum for the society through this Bill, and let us make such changes as may be necessary to achieve that object.

(*Legislative Assembly,* 8-9-1936, *vide Debates, Vol. VI, No.* 7, *p.* 27).

* * *

1·5. Need for stringent provisions.

During the debates, the then Law Member of the Government of India, the late *Sir Nripendra Nath Sircar*, pointed out that 'it is no good concealing the fact that an atmosphere of suspicion prevails with regard to a fairly large class of Indian companies, and this has resulted in setting back the industrial progress of this country'. It was, therefore, necessary to find ways and means for combating the growth and existence of such companies and for taking adequate steps to restore the confidence of the investing public. The new provisions relating to keeping of proper books of accounts, publication of further details in the balance sheets, etc. as detailed in the Amendment Act of 1936, aimed at meeting the vicious activities in the corporate sector. The then Law Member drew attention of the Members of the Legislative Assembly to the new provisions in the following passage of his speech:—

> In the case of existing companies, which come within this category, Hon'ble Members will find that it is proposed in the Bill, in the first place, for keeping of proper books and the publication of further details in the balance sheets. In the next place, powers have been given to the

Registrar on his own motion, and upon reasonable information, to require explanations and to make inquiries, if necessary, to institute criminal proceedings, if the company is found to be guilty of fraudulent trading. Lastly, power is given to the Registrar to apply to the Court for winding up of companies which, from their balance sheets and other documents, are found to be really in insolvent condition. These provisions are, in the opinion of Government, necessary to combat the vicious activities of a large number of companies which have come into existence during the last 10 or 12 years. The ordinary provisions of the Indian Penal Code have been found to be wholly insufficient to meet the necessities of these cases, and Government have, therefore, made express provisions in the Bill itself to meet and cope with omissions and commissions which are commonly found in this class of companies to be dealt with as offences under this Act.

(*Legislative Assembly*, 15-4-1936, *vide Debates, Vol. V, No.* 3, *p.* 5).

* * *

1·6. New restrictive provisions vis-a-vis legitimate and honest business activities.

In bringing up amendments to the Indian Companies Act, 1913, Government had taken care that these did not stifle the healthy growth of joint stock companies in the country by driving away 'honest men' from the field of corporate activity. The Government was of the opinion that while, no doubt, the shareholders 'should have far greater knowledge and far more effective control of the affairs of the companies than they now possess', the unreasonable or hostile elements among them should not be made so powerful as to render the proper functioning of companies difficult. The then Law Member, the late *Sir Nripendra Nath Sircar*, stressed the above point of view of the then Government in the following words:—

> Trade and industry in India are in a backward state compared to some other parts of the world, and it will indeed be disastrous if amendments of existing law stifle the healthy growth and development of joint stock concerns.
>
> It is certainly desirable that shareholders should have far greater knowledge and far more effective control of the affairs of the companies than they now possess, and, yet, I venture to submit that, on the other hand, it should not be possible for the smooth running of the business of a company to be embarrassed or even to be effectively checked by an unreasonable or hostile shareholder. Indeed, it is not difficult to imagine that efficiency and success of management will depend on comparative freedom to pursue a policy without undue and excessive interference.

(*Legislative Assembly*, 15-4-1936, *vide Debates, Vol. V, No.* 3, *p.* 4).

* * *

1·7. Company Law and shareholders' interests.

The general apathy of the shareholders towards the activities of companies and the beneficial fruits of the company law to the shareholders were commented upon by the then Law Member, the late *Sir Nripendra Nath Sircar* in the following passage:—

> Shareholders in all countries—and more so in this country—often take very little interest in the activities of companies until it is too late and until they hear that all is not well with the affairs of a company. No legislation can possibly rouse shareholders who make up their minds to go to sleep, but the present improvement will at least enable the wakeful ones to have far greater knowledge of particulars of companies than they can do at present under the Act of 1913.

(*Legislative Assembly*, 15-4-1936, *vide Debates, Vol. V, No.* 3, *p.* 6).

* * *

1·8. Registrars of Companies: Scope of their powers.

The policy of the Government in the past was not to grant wide powers to the Registrars of Companies which have now, in some respects, been given to them under the Companies Act, 1956. In fact, in the thirties, Government believed in the policy of 'minimum interference' which was in consonance with the then prevailing atmosphere of *laissez faire*. The then Law Member expressed the Government's view on this subject as follows:—

> I have been unable to accept in its entirety the very much wider powers of interference of the Registrar recommended by Mr. Sen. Public investigations into the affairs of a company by a Registrar, who may happen to be an over-zealous person or who may have been misled, may damage the credit of a company irreparably, even though the ultimate decision may not be adverse to the company. On principle, I am opposed to exercise interference, and I could not, therefore, accept the recommendations of Mr. Sen fully.* I am opposed to any Government official, whether he is Registrar or any body else, being in a position to make or mar a business concern, and I have, therefore, provided for the minimum interference required for dealing with these companies.

(*Legislative Assembly*, 15-4-1936, *vide Debates, Vol. V, No.* 3, *p.* 5).

* The recommendation of the late *Shri Susil Sen* referred to by the Law Member were the following:—

In the absence of an organisation like the Board of Trade in England it is, in my opinion, essentially necessary, having regard to the increase in the number of companies which are being incorporated, that the Registrar should be given such power as would enable him to supervise the affairs of companies, to enforce proper observance of the provisions of the statute and to protect the interests of the public to some extent.

I recommend that in the Act the following powers be given to the Registrar of Joint Stock Companies:—

(1) Power in connection with an investigation under section 137 to call for statements (on oath or otherwise) from the directors and officers of the company, and for the production of books of accounts and other documents.

(2) To exercise similar power in cases in which he has reasons to believe (a) that any director or other officer of the company has been guilty of fraud or any other offence in relation to the company for which he may be criminally liable, or (b) that a company is not carrying on its business properly or in such a way as to result in the public or any section thereof being defrauded, or (c) that the affairs of a company require investigation.

(3) Powers to make a report to the Local Government embodying the result of an investigation under the provisions of clause (2) and with the sanction of the Local Government to place papers and documents of any company before the Public Prosecutor, and, if so advised, to take proceedings against the directors or other officers of the company.

(4) Powers under section 166 to present a petition for the winding up of a company which has been proved to have been carrying on its business fraudulently or dishonestly, or whose financial condition as disclosed from its balance sheet or as found out as the result of any investigation made under the provisions of the Act is such that it is unable to meet the liabilities.

(5) Power to apply for the winding up of the company of which the number of members is reduced below the minimum, if within six months from the time when such reduction takes place the reduction in the number is not made up.

(6) Powers to nominate auditors for auditing accounts of banking companies which desire protection in the nature of a moratorium.

(*Extract from page 66 of the late Shri Sushil Sen's Report.*)

* * *

1·9. Administration of Companies Act: A set-up like the Board of Trade in the U.K. demanded.

Consensus of opinion during the debates on the Companies (Amendment) Bill in 1936 was against conferring wide powers on the Registrars of Companies. While this was so, strangely enough, no discussion took place on the proper and effective administration of the Companies Act, through a centralised and expert administrative body, as was set up after about twenty years in 1955 by the creation of the present Department of Company Law Administration. During the Debate in 1936, *Shri M. Ananthasayanam Ayyangar* alone referred to the creation of an expert body like the U.K. Board of Trade, for at least the limited purpose of carrying investigation into the affairs of companies. *Shri Ayyangar* suggested that instead of clothing the Registrar of the Joint Stock Companies with enormous powers as the Sen Report suggested, the promoters of the Bill would do well to bring into existence a Board of Control of Joint Stock Companies on the lines of the Board of Trade in England. Elucidating his suggestion *Shri Ayyangar* spoke as follows:

I would like to have a Board of Trade here appointed if not for all the purposes for which it has been con-

stituted in England, at any rate for the restricted purposes under this Act. In England the Board of Trade has the right to appoint inspectors to investigate into the affairs of a particular company. The ordinary layman may not be in a position to know what the affairs of a particular company are. We as laymen get perturbed over small losses; we may magnify them and immediately call for the winding up of a company or ask for an inspector to go into the accounts. Even a company that may normally work might be made to collapse like this. Therefore, the work of appointing inspectors must be entrusted to a competent body like the Board of Trade. I would suggest it is not too late even now to make provision for a Board of Control for each province, consisting of representative men from the shareholders and management, with experts appointed by the Government to consider cases to advise whether a company is in a position to stand on its own legs and at what time the Board of Control can intervene by appointing inspectors to study the affairs of the company and so on.

(*Legislative Assembly*, 8-9-1936, *vide Debates, Vol. VI, No. 7, pp.* 17-18).

* * *

1·10. Mushroom Companies: Check over their activities and growth.

One of the important objectives of amending the Indian Companies Act, 1913 in 1936 was to check the floatation and activities of "mushroom companies" which during the twenties and thirties had sprung up in large numbers. The activities of these companies engendered an atmosphere of suspicion against all companies in the country. The new provisions, such as, the fixing of minimum subscription upon which the grant of certificate of commencement of business was to depend, the keeping of proper books of accounts, the publication of further details in the balance sheets, etc. were added to the statute to check unhealthy activities of mushroom companies in particular. The then Law Member spoke on this subject as follows:

> Experience has shown that the growth of such companies is fast becoming a menace to the healthy evolution of business life in this country. As a result of the ushering in of these companies, with their short span of life, it has become immensely difficult, if not practically impossible, to secure capital even for deserving industrial institutions. And, in the opinion of Government, matters have come to such a pass that the Legislature is now bound to step in to prevent the formation or continuance of these companies.
>
> In this Bill, the matter has been dealt with from two points of view. We have tried, first of all, to provide against formation of mushroom companies in future by, first of

all, providing that the fixing of the minimum subscription, upon which depends the certificate of commencement of business, is no longer to be left to the caprice or the whim of the promoters who start the company, but it is to be fixed upon a basis which must leave in the hands of the management a reasonable working capital after payment of the preliminary expenses, subject to a minimum limit set in the Statute. It should not be less than one-third of the capital offered to the public of which 25 per cent must be paid-up. This provision....will prevent companies which have not got a sufficient amount of working capital from commencing their activities and thus prevent the formation of these so called mushroom companies.

(*Legislative Assembly*, 15-4-1936, *vide Debates, Vol. V, No. 3, p.* 5).

* * *

1·11. Voting Rights: Removal of inequalities attached to deferred and ordinary shares.

Short of suggesting the abolition of the category of deferred shares which has now been effected under the provisions of Companies Act, 1956, a suggestion was made as early as in 1936 by a Member of the Legislative Assembly for bringing the voting rights in proportion to the amount of paid-up capital irrespective of the class differentiations in the shares issued by a company. This suggestion was specifically directed against the privileged position enjoyed by the deferred or founders shares which were of small denominations and over-weighted with voting rights. The suggestion was mooted by *Shri Baijnath Bajoria* and was supported by *Shri M. Ananthasayanam Ayyangar* but was opposed by the European Member, *Mr. T. Chapman-Mortimer* and the then Law Member, the late *Sir Nripendra Nath Sircar*. The Government's opposition was based on the contention that *Shri Bajoria's* suggestion would destroy the then existing company law principles which allowed complete freedom to companies to attract money or issue shares on whatever terms they liked and invest the same as they wished. Eventually, however, *Shri Bajoria* withdrew his amendment. *Shri Bajoria*:

Sir I move:

"That in clause 32 of the Bill, after clause (e) of sub-section (1) of the proposed section 79, the following be added:

(f) in any company incorporated after the commencement of the Indian Companies (Amendment) Act, 1936, the voting rights of the different classes of shares (excepting preference shares) shall be strictly in proportion to the capital paid up respectively by each of such classes of shares".

Sometimes, it is seen that the ordinary shareholders are deprived of their right of control over the affairs of the company by the very ingenious device of issuing deferred shares, founder shares, management shares and so on, which though of very small denominations, carry

disproportionately high voting rights. This disproportionate voting right is most inequitable and unjust to the ordinary shareholders who form the bulk of the shareholders of the company and who contribute the major portion of the capital of the company..... As regards the preference shares of companies, I am leaving it to the articles of association, whether they will give opportunities to the preference shares in the matter of voting rights or not, but as regards the ordinary shares and deferred shares or other such shares, I think the voting rights must be proportionate to the capital invested by these classes of shares.

1·12. Mr. T. Chapman-Mortimer.

I oppose this amendment. The chief objection to Mr. Bajoria's proposal is that it cuts right across the accepted principles of company law as we have them here in India today and as they are known in England. As things are at present, a company can make whatsoever arrangements it thinks best in the interests of its shareholders, to decide what classes are to have votes and in what proportion.

1·13. The late Sir Nripendra Nath Sircar.

Since the company law has been in existence, it has been the right of the company to issue shares on whatever terms it liked. For the purpose of attracting capital it may be necessary at one time to issue shares different from other classes of shares and it may be necessary to give extra voting power for the purpose of attracting capital.... This is not a small matter. This destroys the whole structure of the company law. That is to say, companies in future are not to be allowed to issue shares with different voting rights. This amendment is of such an important character and it causes such an encroachment on the existing company law that I must oppose it.

(*Legislative Assembly,* 16-9-1936, *vide Debates, Vol. VII, No.* 2, *pp.* 9—12).

* * *

1·14. Company Directors: Their fiduciary responsibilities and indemnity clause in the articles of association.

The indemnity clause in the Articles of Association diluted the sense of fiduciary responsibility of directors who under the cover of this clause became somewhat irresponsible. The late *Shri Bhulabhai J. Desai* wanted suitable modifications to be made in this clause so that directors did not escape consequences of their neglectful acts.

There are two clauses with reference to directors to which I wish to make some reference. First is what is called the indemnity clause. While I do not approve for the certain definite functions to discharge and the directors

> in favour of the clause which now exists. In England, illustrated by the Equitable Insurance case run by Mr. Beevan and, in India, by numerous cases of companies.....the fact has been borne in upon us that that *indemnity clause practically makes directors irresponsible for the consequences of their own personal neglect.* ...I feel that the indemnity clause hitherto is such that no shareholder public ever understood the effect of it. It has had the effect of directors coming and saying "during the proceedings something was brought before us by the management and we passed it. We were entitled to rely on integrity and skill and knowledge of our executive and we are not responsible for any loss or damage". I submit that such a thing must be rendered impossible so far as legislation can render it impossible. Otherwise directorship has no meaning except for making sitting fees; in one day probably they dispose of 20 companies and thus earn fat fees. A matter of that kind must certainly be rendered impossible.

(*Legislative Assembly*, 15-4-1936, *vide Debates, Vol. V, No.* 3, *p.* 16).

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1·15. Company Directors: Restrictions on their powers.

Many of the company directors though they had a nominal financial stake in the company, enjoyed wide and unfettered powers under the Act of 1913. *Shri M. Ananthasayanam Ayyangar* advocated the placing of some additional restrictions on the directors so that the growth of 'mushroom companies' and vicious activities of company management complained of during the debates on the Amendment Bill, 1936, were effectively checked. *Shri Ayyangar* enumerated his suggestions with regard to the imposition of further restrictions on the company directors in the following passage:

> The purpose for which this Bill is mainly intended could certainly be achieved if some more restrictions are placed and some more qualifications are insisted upon in the case of Directors. I may mention some qualifications which, according to me, are necessary, but which unfortunately have not been referred to in this Bill. Firstly, I would say that there must be a share qualification for a Director in all companies. In the memorandum and articles of association of several companies it is no doubt true that the qualification of a particular number of shares is insisted upon for qualifying a particular shareholder for a directorship, but it is desirable that a statutory provision should be made insisting upon a minimum amount of shares to be taken by a Director before he can be qualified as a Director. Nobody can be a shareholder in a company, under the existing law, unless he takes up at least one share. With regard to the qualifications for a Director, some more shares are insisted upon the Directors, as a whole, taking up not less than one-tenth of the authorised capital. This, no

doubt, might exclude some of the financial experts or experts in banking and experts in commercial concerns who, in the interests of these particular concerns, might be necessary on the directorate. I would suggest a remedy for this. Fifty percent of the Directors might take this one-tenth—not less than fifty per cent of the Directors should have the same qualification, leaving the rest of the directorate to be experts and so on. Some such qualification is necessary for otherwise, the very object of preventing the growth of mushroom societies might be frustrated.

Then at the time a company is started, I would like that the Director ought not to have a substantial interest in any contract or the business for which the company is floated, as, otherwise, he would be in the position of being practically a rival of the company.... Then, one or two other qualifications are also necessary. Thus, it is not desirable that a man and his own servants or his partners should be in the directorate as through such private partnership one Director might practically monopolise the powers of all the Directors. Partners or servants of the Directors or members of their families ought not to be there. Further, it does not appear that there is any statutory provision restricting the period for which a Director can work. It is open under the present law for a Director to be a life Director. Whereas, it is found necessary now under the new Bill to make a provision to restrict the period for which the tenure of a managing agent is limited to twenty or twentyfive years or to ten years as recommended by the expert, I would like to restrict the period of service of any particular Director to five years, with the additional privilege for him to be a Director for a second period of five years. There must be a statutory restriction of the period during which he can continue to be a Director at a stretch. Then as regards, the power to borrow, no provision is made in the Bill, restricting the maximum amount or imposing the maximum amount up to which Directors can borrow with respect to limited companies. There is a provision under the Co-operative Societies Act by rules framed by the Registrar of Co-operative Societies restricting the amount of borrowing to eight times or ten times the amount of the share capital. There is no such provision here because it is expected that with respect to private joint stock companies the shareholders will always try to avoid that and their position will not make them borrow unnecessarily. But, I would say, having regard to the long report that has been placed and the doubts that were created that it is necessary that some such restriction ought to be placed *viz.*, eight times the subscribed share capital, not the authorised capital, and any further increase of the borrowing power should be made only upon an application to the Court and after its sanction.

Then there is another matter that has to be provided for. We have the delegation of powers to the Directors. Whenever delegation is thought to be necessary, even in the minutest detail, it must be on the sole and entire responsibility of the Director himself because, when a person takes up shares in a company, he takes it on the credit of the Director whose name appears there; he does not know anything about the ministerial officer and the directorate as a whole or the Directors jointly and severally are the persons in whose hands the sole charge of the company is entrusted. Under these circumstances, if they delegated any particular powers, even with respect to those that are delegated under the Act, the entire responsibility must still rest on the Directors regarding the true discharge of those duties.

(*Legislative Assembly*, 18-4-1936, *vide Debates, Vol. V, No. 6, pp. 6-7*).

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1·16. Company Directors: Restrictions on their powers to take loans from companies.

The late *Shri Bhulabhai J. Desai* suggested that the borrowings by the "indoor management" from the funds of the companies managed by them should be restricted as these very often resulted in heavy losses to the companies. On this matter the late *Shri Desai* spoke as follows:

There is one more matter relating to the borrowing powers which I wish to refer to. It is now suggested that the lending to Directors or lending to companies in which the same Directors or managing agents are also Directors and managing agents should be rendered at least as difficult as possible, if not impossible. My experience in the winding up of many companies in Bombay, Ahmedabad and outside showed me that companies which had something like 50 lakhs reserve when they went into liquidation, the borrowers being the managing agents, or one or the other of the directors were unable to put in a single pie, so that on paper their shares so far as the public were concerned were three or four times their nominal value, but when it came to actual winding up, it had no value at all..... I suggest that there are three matters* in this connection which it is necessary to remember, firstly the limitation of borrowing powers—this is very essential and very important, secondly lending by one company to another which is not merely under the same managing agents, but substantially the same managing agency or substantially the same board of directors, because it is not merely the managing agents who try to prop up one of their failing companies by the credit of one of their stronger companies, of which indiscretions were found

* Of the three matters only two were actually mentioned in this speech .

in the Bombay High Court between 1910—1914 and those lessons will never be forgotten and indeed must be utilised for the purpose.

(*Legislative Assembly*, 15-4-1936, *vide Debates, Vol. V, No.* 3, *p.* 17).

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1·17. Company Directors: Restrictions on their powers to enter into contracts.

Considering the fiduciary responsibility of the directors towards the company, *Pandit Pant* suggested that some additional obligations should be cast on them. Among these, he mentioned that a director should not enter into a contract with any company except with the consent of the shareholders and that a director should be required by law to place before the general meeting of the shareholders a statement showing the sale or purchase of shares of the company of which he is a director. *Pandit Pant* spoke on this matter as follows:—

> Then, there is one other important matter which I think should be considered by the Government. This Bill, as does the existing Act, only provides that in case of a contract concerning a director, information should be given to the company and the director concerned should not vote. I think it is against all canons of morality to encourage practices involving an inevitable conflict between duty and interest. A director holds a fiduciary position and to allow him to deal with a company on his own account and for his own profit seems to be reprehensible. So, while I would like to prohibit the practice altogether, the least I am suggesting is that no director should enter into any sort of engagement, arrangement or contract with any company except with the consent of the general body of shareholders in a general meeting. That, I think, is the minimum that should be provided for. Then, the directors have the means of carrying on speculation in the shares of their respective companies. They can manipulate the value of the shares. So, to guard against such contingencies, the directors should be required to place a statement before the general meeting showing the transactions entered into by them in the course of the year as to the shares purchased or sold by them. That would enable the shareholders to know if there was real speculation or if there was a genuine dealing.

(*Legislative Assembly*, 8-9-1936, *vide Debates, Vol. VI, No.* 7, *p.* 24).

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1·18. Company Directorships: Limitation of number for individuals.

Even in 1936, it was suggested that the number of directorships that a person might be allowed to hold, should be restricted as it

has now been done under the provisions of the Companies Act, 1956. The Government spokesmen then turned down this move as impracticable. In their view, "the legislature must leave it to every individual to decide as to the extent of liabilities which he is prepared to undertake". The then Law Member, the late *Sir Nripendra Nath Sircar* presented the Government view in the following words:

> The Bill also provides that of the Board at least two-thirds of the members should be elected at a General Meeting, thus providing for a majority of the nominees of the shareholders. We have, however, been unable to accept the suggestions, made in some quarters, that the law should provide for the number of concerns of which one particular individual may become a director..... Such a provision is not practicable. The legislature must leave it to every individual to decide as to the extent of liabilities which he is prepared to undertake.

(*Legislative Assembly*, 15-4-1936, *vide Debates, Vol. V, No. 3. p. 6*).

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1·19. Board of Directors: Restriction on nominees of managing agents.

A suggestion to restrict the number of nominees of the managing agents on the board of directors to one or two directors was also made during the debate on the Companies (Amendment) Bill in 1936. The late *Shri Satyamurti* made a strong plea for reforming the composition of board of directors in this direction, and moved an amendment to the effect "that in clause 42 of the Bill, after the proposed Section 87H, the following section be inserted: "87K. No managing agent shall have any power to appoint more than one director of a company of which he is the managing agent". His amendment, however, was voted down and in place of his amendment, the House adopted another amendment to the effect that notwithstanding anything contained in the articles of a company other than a private company, the directors, if any, appointed by the managing agent shall not exceed in number one-third of the whole number of the directors. It was, however, after twenty years in 1956, a provision bearing a close similarity to the one proposed by the late *Shri Satyamurti* to achieve the purpose he had then advocated was made in the Companies Act.

On restricting the number of managing agents' nominees on the board of directors *Shri Satyamurti* said the following:

> The House will notice that the Bill, as originally recommended by the Select Committee contained a provision providing for shareholders a minimum of one-third of directors and a maximum of one-third for the managing agents. By some accident that got knocked out and I am trying to repair the mischief at this stage. I am moving this provision that managing agents shall not have the power to appoint more than one director. The result of all these amendments so far carried is that managing agents have certain definite functions to discharge and the directors

have certain other functions to discharge. Dyarchy is bad enough but if it is to consist of one-half of nominated members then it becomes monarchy masquerading as dyarchy. Today, the managing agents not only have all the powers under this Bill but also they have the power of nominating directors to an unlimited extent. I am sure all those Honourable Members who want the prosperity of our companies will agree with me that shareholders must have the right to elect directors. Of course, there may be some need for the managing agents to have their point of view presented on the directorate so that their cases may not be decided by default. That is why I provide that one director should be nominated by the managing agent. His functions are well-defined in the agreement or in the articles of association or under this Act. He knows exactly what his duties and responsibilities are. On the other hand, we must, I think, have an independent directorate of the managing agents who will be responsible only to the shareholders. I think it is a happy compromise by which we will have directors who will carry on the general management of the company and there will be the managing agents who will be discharging their duties under their contract with the company or under the articles of association or under this Act. It seems to me that that will be the best way of guaranteeing to managing agents their freedom, to directors their freedom and the shareholders having their voice on the directorate. The question is this. The managing agent ought not to manage the company directly himself and then pull the strings of the directors also. After all, the managing agent must have his rights and liabilities. It is not right that he should have all his rights and privileges under the contract, under the articles of association and under this Act and yet also seek to influence the directorate unduly. Let him have his case represented by all means. Having done that, the entire management should be in the hands of the directors.

(*Legislative Assembly*, 2-10-1936, *vide Debates, Vol. VIII, No.* **4**, *pp.* 37-38).

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1·20. Board of Directors: Election on the basis of proportional representation.

Pandit Govind Ballabh Pant advocated the incorporation of the principle of proportional representation for election to the Board of directors, in the Companies Act, in the following words:

I have a proposal which may be styled as more or less revolutionary..... This revolutionary proposal of mine in this matter is to the effect that the directors should be elected by the system of proportional representation by means of a single non-transferable vote in accordance with rules to be framed under the section which gives such power to the Governor-General. It seems to me

reasonable that every group which is strong enough to return a director should be able to do so.

(*Legislative Assembly*, 8-9-1936, *vide Debates, Vol. VI, No. 7*, p. 24).

* * *

Pandit Pant, in fact, wanted that a mandatory provision should be made in the Companies Act, as regards the election of directors to the board on the basis of proportional representation. He spoke on this as follows:

The third amendment which I have moved asks for the introduction of the principle of proportional representation by a non-transferable vote. Now one feature is common to all these propositions and it is this, that the person who can get the quota will be returned. In the case of the transferable vote, if there is any excess left, then it will be transferred to the second preference. In the case of the non-transferable vote, there is nothing like that. The benefit of the non-transferable vote is this that it ensures the return of the man who has the support of necessary number of the individuals who do not fall short of the quota. At the same time, it can be worked in a very simple manner.

I want the House to remember that the first amendment of *Mr. Satyamurti* gives only discretion to the company to have or not to have proportional representation. The second amendment of *Mr. Bajoria* does likewise. The third amendment which I had the audacity to place before the House wants to have this uniformly and without any exception.

I want the mandatory principle that all elections to the boards shall be in accordance with the principle of the non-transferable single vote.

(*Legislative Assembly*, 17-9-1936, *vide Debates, Vol. VII, No. 3*, p. 12).

* * *

Pandit Pant held that for purposes of elections to the executive and the administrative bodies like the board of directors, the method of proportional representation was the best principle and safeguard. With the authority of Horwell, he expressed his views on this subject as follows:—

My friends here have enunciated a reverse doctrine in fact; so far as democratic bodies are concerned, proportional representation is not desirable, and so far as executive bodies and administrative bodies are concerned, proportional representation is the best safeguard. That is the opinion even of the unrelenting critics of the system of proportional representation. I have before me a book by Horwell on proportional representation. He is an inveterate enemy of the system of proportional representation but even he states that so far as

administrative and executive bodies are concerned, proportional representation is the best system by which we can secure the maximum standard of efficiency; but where we want the reflection of political opinions which differ fundamentally, there proportional representation is a misfit and out of tune.

(*Legislative Assembly*, 17-9-1936, *vide Debates, Vol. VII, No.* 3, *p.* 11).

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1.21. *Pandit Govind Ballabh Pant's* suggestion for imcorporating the concept of proportional representation for purposes of elections to the boards of directors was not accepted by Government. On behalf of the then Government of India, Shri Susil Sen, said that that principle cut across the fundamental principles underlying the concept of joint stock companies where minority had to take the risk of having to acquiesce in the wishes of the majority so long as oppression or fraud was not committed by the latter. The late *Shri Sen* spoke as follows:—

The remedy suggested by *Pandit Pant*, is this, that the minority must be provided for *i.e.* they must be allowed to have their own representatives on the Board in proportion to the capital held by them. But may I remind him that that is against the fundamental principles underlying joint stock companies where every shareholder or every group of shareholders who are in a minority stand the risk of having to acquiesce in the wishes of the majority so long as it does not amount to any oppression or fraud on them. That is the fundamental notion of a joint stock company.

(*Legislative Assembly*, 9-9-1936, *vide Debates, Vol. VI, No.* 8, *p.* 15).

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1·22. In a different context the late *Shri Sen* again referred to the minority's relations with the majority in control of the management of the company in the following words:

The principal idea in the matter of companies is that the minority has got to obey the mandates of the majority except in cases which amount to fraud and oppression. It is one of the vital principles underlying companies that the minority must always obey the majority, but subject to limits. As I say, if it amounts to fraud or oppression, it is the right of the minority to set it right. There can be no centralised organisation if the constitution gave the right to the minority to revolt against the majority on all occasions.

(*Council of State*, 12-10-1936, *vide Debates, Vol. II, No.* 8, *p.* 6).

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1·23. Disclosures in the company accounts.

The Companies Amendment Bill, 1936 in its original form included a clause that Regulation 107 in the model form of Articles

of Association appended to the Act, which required some more details of profit and loss account, would be mandatory. The acceptance of this, would have provided the shareholders an opportunity to understand the financial affairs of the company better. This proposed move aroused a major controversy during the debate on the Bill in 1936. Opposing the proposal, the European Member of the Legislative Assembly *Mr. L. C. Buss* moved the following amendment and spoke as below:

He moved:

"That after the proviso to clause 7 of the Bill the following further proviso be added:

"Provided further that Regulation 107 shall not be deemed to form part of the Articles of Association of any company if the company in general meeting shall so determine."

and spoke:

Under the provisions of Regulation 107 which it is now sought to make compulsory, information has to be provided in profit and loss Accounts which will in a large number of cases be detrimental to the interests of the company, and consequently to the shareholders. This was not, of course, the intention of those who desired the inclusion of this Regulation in clause 7. Their intention was that the shareholders should obtain more information about the affairs of the company than is usually disclosed in balance sheets and profit and loss accounts. One of the arguments for publication of profit and loss accounts is that a large number of companies already publish a profit and loss account as well as a balance sheet, although they are not legally obliged to do so. That is certainly the case but it follows that those companies which do so are naturally careful not to disclose information which would be of value to their competitors and deterimental to themselves. So long as the provisions of Regulation 107 were optional, the directors could protect the shareholders in this way. But once it becomes obligatory their hands are tied to a most undesirable extent.

Another argument is that many companies already disclose full details of costs in their published figures. That is perfectly true and it is, for example, a common practice among tea and rubber companies. But in such cases it is evident that the company has nothing to fear from such disclosure and the information given cannot be made use of by others in the same line of business in a competitive spirit.

It entirely depends on the nature of the business whether disclosure of cost can safely be made. In the coal industry, for example, where the disposal of a colliery's output may very often depend on an anna or two in the price per ton quoted, which in turn depends fundamentally on the raising costs, information about the costs of a competitor mining the same class of coal would

be of the greatest value and might very well result in one colliery putting a neighbour out of business or making things so difficult for him that there would be no profits to divide among the shareholders. I feel sure those Hon'ble Members who have any knowledge of the coal industry as directors or shareholders will agree that this is a correct statement of fact.

It is one thing to make a profit and loss account compulsory and quite another to stipulate for the disclosure of detailed figures. I submit that the compulsory inclusion of Regulation 107 without giving the shareholders a chance to object is unnecessary and damaging. There are elsewhere in the Bill a large number of new provisions for publicity and disclosure of information, some of them eminently reasonable and some, in my opinion, less so. Their cumulative effect is to give the shareholders a much better opportunity of knowing about the working of their company, a principle which cannot be objected to. But I hope this House will not insist on going further than is right and proper in the interests of all concerned but will agree to the provision which I propose should be added to clause 7 with reference to Regulation 107.

(*Legislative Assembly*, 14-9-1936, *vide Debates, Vol. VI, No.* 11, pp. 20-21).

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1·24. *Pandit Govind Ballabh Pant* opposed the European Member's above motion and said that the requirements of the provisions of Regulation 107 should not be made optional. *Pandit Pant* spoke as follows:—

The amendment says that it will be open to a company at any general meeting to decide against the inclusion of Regulation 107. That is, the essential information that is to be given in the form of the profit and loss account need not be furnished.

I do not see what else it can mean. If it means that a profit and loss account will be prepared, that is, a certain paper will have the heading profit and loss account but it will be left to the company to make any entry it likes in the profit and loss account—there is no instruction or direction anywhere in the bill as to the compulsory contents of that document—then I submit that it is tantamount to saying that that company will be free not to prepare and not to submit a profit and loss account. What is this profit and loss account to contain? Is there any regulation in the Bill or in the Act prescribing the contents of that profit and loss account? I will be glad if I am disillusioned, but so far as I am able to understand the position is this. There is no form of profit and loss account prescribed in this Bill. Only article 107 lays down what the profit and loss account should contain. If you make article 107 discretionary

or optional, then it is practically left to the sweet will of the company whether to prepare any genuine profit and loss account or not to prepare it. So, practically the whole of this provision is wiped out. You may direct every person to prepare a balance sheet, and every one can comply if you do not prescribe the contents of that balance sheet. No unscrupulous person will find any difficulty in preparing a balance sheet if you say. "Prepare a profit and loss account but I do not force you to disclose such items as you are not disposed to disclose". But it will be a fruitless and futile proceeding. It will mean nothing. The utility of the thing depends on your insistence on its disclosing certain points and certain matters which ought to be disclosed in order to give the shareholders and the public a correct idea as to the state of affairs of the company and as to the way it has worked during the year. It is unintelligible to me in fact how the Government can accept such an amendment.

(*Legislative Assembly*, 14-9-1936, *vide Debates, Vol. VI, No.* 11, p. 27).

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1·25. **Annual Accounts: Additional provisions.**

The purposes for which the new provisions relating to company accounts and audits had been incorporated in the main Indian Companies Act, 1913 by the Amendment Act of 1936, were explained by the then Law Member the late *Sir Nripendra Sircar* in the following passage in his speech delivered in the Legislative Assembly:

> In the present Act, the Act of 1913, there is no express provision made as to the books which every company must keep, with the result that in many cases one can hardly find a complete record of the activities of these companies ..... This defect was noticed in England where also a similar provision was absent, and, in the new Companies (Consolidation) Act of 1929, this has been remedied, and the Statute now expressly provides for the books which every company must keep. A similar provision has been made in the present Bill also... We have also suggested that the auditors will have to give a certificate annually as to whether all books have been kept or not. We have also provided that the auditors ought to have independent right of their own to attend meetings of shareholders and thus be in a position to see for themselves that the shareholders have all the information which they require as regards the accounts of the company. It has been, by this Bill, made obligatory on the company to publish the auditors' reports along with the balance sheet. At present, there is no such liability.
>
> These provisions will, it is hoped, serve to bring to the shareholders the views, not only of the directors, but also of

the auditors, as to the accounts and affairs of the company. As to the accounts of companies themselves, Honourable Members will find that the Bill provides for much greater details being given in the balance sheets. These details have been worked out so as not to impose, as I have told the House already, any unnecessary or too heavy a burden upon the management, but to ensure that all information as to investments, debts, stocks, etc., should be given to the shareholders.

The Bill also provides a limit within which the balance-sheet must be filed—I believe, I am right in saying that there is no provision now,—thus making a much needed provision which will prevent dilatoriness on the part of the management.

(*Legislative Assembly*, 15-4-1936, *vide Debates. Vol. V, No. 3, p. 6*).

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1·26. Auditors: Their position vis-a-vis the company management.

For ensuring the independence of the auditors, a number of suggestions were made by *Shri M. Ananthasayanam Ayyangar*. He *inter alia* suggested that the director, managing agents, etc. should abstain from exercising their voting rights at the time of the election of auditors at the annual general meeting of the company and that the use of proxies should also be ruled out. He spoke as follows:

An auditor according to me is the backbone of a company's management. It is he who can have peculiar knowledge of the working of any company or a bank. He has access to the records of the company. He can easily get into them, make his own remarks, call for explanation from the various officers, the directors and others. Therefore, the appointment of an auditor must always be independent of the management. The auditor has to check and supervise the work of the administration. Naturally therefore even in the old Act it was not thought expedient to place his appointment in the hands of the directors. In the new Act, some more provisions have been made to see that he gives a dispassionate opinion on the affairs of the company. In my opinion these safeguards are not sufficient. First, with respect to his appointment the shareholders are entitled to appoint him. Now even though the shareholders are asked to appoint him, if a poll is demanded, at a meeting the number of votes depends upon the number of shares each man has, and the managing agents are able to get proxies and thus influence the votes. Very often the stable body that represents the management is there and the person who is appointed the auditor comes in only with the active support of the management. If any rules are framed, they must be such as to remove the possibility of either the managing agents or the directors having any hand in the appointment of the auditor. The auditor must be absolutely free and independent, and

I would therefore suggest that neither the managing agents nor the directors should be allowed to vote at a general meeting when the appointment of an auditor is made. It may no doubt be that the managing agents and the directors may have a large stake in the business of the company. They may have the largest number of shares, but all the same, as it is with respect to their work and with respect to their administration and their management of the affairs of the bank or the company that the auditor has to check, it is not just and proper that they should have a voice in the selection of a man who is to be their own critic. I would say that such an auditor would not criticise the actions of the managing agent or the directors, but would certainly give a good picture of their administration.

It is also necessary to entrust the power of appointing the auditor to those persons who care to be personally present in a general body meeting. Usually people can easily get proxy forms and manipulate votes. It is desirable to avoid proxies being used for the purpose of deciding votes regarding the appointment of auditor.

I should also like some clause to be added in the Bill which would prohibit the auditor being appointed auditor during the same period for auditing any other business in which the managing agent may be interested. The reason is that when he is appointed auditor for this company, naturally being a businessman and taking human values or virtues as they stand, if he is to audit another business over which the managing agent has got control, he may not discharge his duties by this company properly. I would try to avoid any temptation being thrown in the way of the auditor discharging his duties dispassionately and in the best interests of the company.

(*Legislative Assembly*, 8-9-1936, *vide Debates, Vol. VI, No. 7, pp.* 14-16).

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1·27. Managing Agencies: Appreciation of their role.

The Government's appreciation of the role of the managing agencies at the time of the debate on the Companies Bill in 1936 was that neither of the extreme divergent opinions—that all of them had a bad record and deserved immediate liquidation or extinction or that they had placed the society under a deep debt of obligation and, therefore, should be allowed to function freely without any fetters—was correct. All that they needed was a moderate dose of corrective measures. The then Law Member the late *Sir Nripendra Sircar* spoke on this point as follows:

As regards the divergent opinions which have been received about this system, some contend that the system should be extinguished at once and with retrospective effect, steps should be taken to terminate the agreements which are now in existence and have still to

run. In fact, probably it is not much of a parody to say that according to some of the opinions these managing agents should be shot at sight. At the other end is the opinion that companies are under such a deep debt of obligation to managing agents and so necessary are they still that this institution should not be touched at all. I need hardly say that neither extreme view is correct.

(*Legislative Assembly* 15-4-1936, *vilde Debates*, *Vol. No.* 3, 7).

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1·28. Managing Agencies: Plea for retention.

Favouring the retention of managing agency system, *Pandit Govind Ballabh Pant* said the following in the Legislative Assembly in the course of the debate on the Companies (Amendment) Bill in 1936:

I feel that in spite of what one might wish, we cannot, at the present stage get rid of the managing agency system. We feel that it would not be desirable in the interests of the industrial advancement of the country to give up this system altogether. I should rather say 'I', because in this respect I know there are some friends here who feel and perhaps feel very strongly that the system should be abandoned. They have, however, not yet been able to persuade me to their view.

(*Legislative Assembly*, 8-9-1936, *vide Debates*, *Vol. VI*, *No.* 7, p. 23).

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Pandit Pant's above view was also shared by the late *Shri Bhulabhai J. Desai*. *Shri Desai* said:

I am in agreement with the fact that the utter condemnation or cessation of the managing agency system would be a set back to Indian industries.

(*Legislative Assembly*, 15-4-1936, *vide Debates*, *Vol. V*, *No.* 3, *p.* 14).

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1·30. Managing Agencies: Their wider obligations.

Pandit Pant, however, appealed to the managing agents to realise that the industry had ceased to be the isolated concern of an individual or a small group of people. Its policies and activities reacted on the entire society. It was, therefore, necessary, that the company managements looked beyond their personal gains and took interest in the growth of industry in the country. *Pandit Pant* spoke on this subject in the following words:

I do feel that the managing agents have served a useful purpose and that the country has reason to be beholden to them. But I want the managing agents to realise that,

today, industry has ceased to be the isolated concern of an individual or of any group. I want them to realise that every day there is such an onward march in the field of research, co-ordination, standardisation and so many other things in the field of industry that if these vital concerns are left in the charge of persons, who in most cases have no title to them except the accident of calling themselves the sons of their fathers, then we will be running a grave risk and it is just possible that industries may be altogether effaced in the stiff competition which they have to face day in and day out. It is from that point of view that I want them to look at this problem and not only from the narrow and sordid point of view of a few rupees and annas—or a few pounds and shillings. Is the present system conducive to the maximum amount of efficiency? Does it ensure that? If not, is it desirable to insist upon an exploded system which has hampered the growth of industry because of its innumerable handicaps and which is bound to handicap it further? That is the main reason which I want to place before the Hon'ble Members of this House.

(*Legislative Assembly*, 25-9-1936, *vide Debates, Vol. VII, No.* 9, p. 11).

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1·31. Managing Agency System: Abuses.

During the debates in 1936, the abuses of the managing agency system were highlighted by Shri M. *Ananthasayanam Ayyangar* who suggested that the system should be put under 'as much control or restriction as possible'. He cited the comments of the Majority Report of the Banking Enquiry Committee in support of his views on the managing agency system and on the necessity to impose stringent restrictions

Shri Ananthasayanam Ayyangar:

It has been found by persons who have made a critical study of this system by themselves and through others, and also by the Banking Enquiry Committee that the disadvantages of this system are too many; and unless the system is properly controlled and the managing agents' powers are brought under proper check, it is likely to be abused, and the advantages of this system might be overshadowed by the disadvantages. There is absolutely no other provision in this Act, barring the provision that the managing agent ought not to embark on trade or business similar to the business with respect to which they are managing agents. With respect to all other speculative business, the field is absolutely open to them. If on their credit businesses that they start by way of floating companies come in, and if they are allowed a free hand to embark upon other speculative enterprises, and if they suffer loss—because very often the credit of these people or of their companies is largely linked up with the credit of

the companies outside—and if on account of the various speculative enterprises on which they embark, their credit falls or sinks, then the credit of the companies associated with them also sinks along with them. This unfortunately is the result of bringing the managing agent into intimate contact with the running of the company. Sooner or later, steps have to be taken to see that, as far as possible, companies are administered by directors, the choice of which directors is left entirely to shareholders, for it is ultimately the shareholders that have to profit by the gains or lose by the losses.

I am against this managing system and I would like it to be under as much control or restriction as possible. In this connection, I would refer to the majority report of the Banking Enquiry Committee which has practically condemned this managing system and which advised that the system ought to be replaced by allowing or encouraging directors to manage their own affairs as much as possible. On page 273 of the majority report of the Central Banking Enquiry Committee, in paragraphs 352-53, the Members say: "Although the Managing Agency System is reported to have done a great deal for the industrial development of Bombay, it is admitted that it is not by any means a perfect arrangement but has many serious drawbacks. There have been cases where the managing agents have, besides managing their own mills, traded and speculated and the resulting weakness in their position has reacted on the financial position of the mills themselves and led to the banks withdrawing cash credits even when the mills were intrinsically sound, merely because the managing agents had become weak. Further, although it is true that in times of crisis such as Bombay has been going through, managing agents have incurred extensive losses as a direct result of financing the mills under their control, there have been a few cases in which these agents have turned their loans to the mills into debentures, with the result that the concerns have passed into their hands and the shareholders have lost all their capital invested in the undertaking. It has also been pointed out that this managing agency system works well when everything goes on smoothly and when the industries are prosperous. During these periods of prosperity if more money is required by the industrial concerns, the managing agents may very often continue supplying the money themselves to a considerable degree. Later on, however, when conditions alter and the industry or the particular concern comes up against bad times and the managing agents find themselves compelled to find more money to support the industry, it is found that they are not able in all cases to comply with the requirements."

"We suggest, therefore, that attempts should be made to make industrial enterprises in India less dependent on this system for future development. The establishment of direct friendly relations between industrial companies and commercial banks is desirable especially in view of the capital demands that are likely to arise in connection with mergers and reconstructions which may follow the present economic depression."

(*Legislative Assembly*, 8-9-1936, *vide Debates, Vol. VI, No. 7, pp.* 11-12).

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1·32. Managing Agency System: Plea for placing restrictions.

While *Pandit Govind Ballabh Pant* favoured the retention of the managing agency system, he, at the same time, pleaded for the imposition of restrictions on the activities of the managing agents so that they might not be able to 'earn profits at the cost of the company'. He touched upon this particular point in the following passage:

A managing agent can under the Bill carry out contracts, arrangements and engagements with the company for his own benefit. It is unintelligible to me that a man who is in charge of the whole of the affairs of the company—and that is the definition given in clause 2—should be left free to manipulate the affairs of the company in such a manner as to earn the maximum profit for himself at the cost of the company. That again, as I just observed, in the course of my remarks relating to directors, is flagrantly opposed to the elementary notions of business equity and morality and I think a clause should be introduced—and I have given notice of one—that after the commencement of this Act—I am sorry I could not go beyond that because I do not think I will be able to persuade the Hon'ble the Law Member—the managing agents should not be allowed to deal with companies on their own accounts.

(*Legislative Assembly*, 8-9-1936, *vide Debates, Vol. VI, No. 7, pp.* 25-26).

1·33. Managing Agents: Background and scope of additional restrictions proposed.

The Government viewpoint regarding the continuance of the managing agency system and the need for imposing certain restrictions on their powers was explained at great length in the Council of State by the late *Shri Susil Sen*. Earlier, in the Lower House, Legislative Assembly, the then Law Member, the late *Sir Nripendra Nath Sircar* had at length spoken on this subject. The late *Shri Susil Sen* said:

The materials available to the Government show that it is impossible so far as India was concerned to suggest that this system of managing agency could be done away with. The Government has proceeded on the basis that the managing agency system cannot be done

away with, that it has served to benefit the industrial progress of the country to a very considerable extent.

The system originated in India with formation of companies in the early times when the idea of a corporation was practically unknown to India and people were chary of putting their money into companies unless they had the guarantee of some men of proved worth and substance. That is how it began. It also gained its foothold because of the want of banking facilities which companies in India suffered from the beginning and I am quite sure—and we have acknowledged it on the floor of the Lower House and elsewhere—that but for the help given by the managing agency system many of the thriving concerns which we have today would not be there. But at the same time, the Government could not be blind to the fact that amongst a particular section at least of the managing agents there were abuses which were proved to exist, abuses which called for remedies, and that is the basis, on which this Bill has proceeded. The Bill does not purport to do away with the system of managing agency; it purports to retain it, but retain it within limits. Before I come to the actual provision I crave your permission to indicate shortly the abuses which were found to exist and which Government thought called for remedy in the Bill. In the report which was submitted to the Government at pages 31 and 32. Hon'ble Members will find a summary of what were the matters of which consideration was called for. If I may be pardoned for drawing your attention to them, the matters against which Government was called upon to consider amendments were: (i) inter-investment or the investment of the surplus funds of one company in another company run by the same managing agents; (ii) the practice of financing capital expenditure by short-term loans; (iii) the unsatisfactory way in which managing agents have disharged their obligation in respect of subsidiary service undertaken by them; (iv) unreasonableness of the remuneration, specially the charging of commissions on the sales and purchases and office allowance; (v) the practice of assigning the agency without any reference to the company; (vi) the practice of managing agents taking up the management of more concerns than they can effectively control; and (vii) the unduly long periods for which managing agents are appointed and the unsatisfactory provisions for their removal.

These were the matters upon which the Government was called upon to consider. The greatest difficulty with which the Government was faced was in the case of existing managing agents and in making up their minds the Government had to take into account two extremely divergent views which were urged. One section, wanted the abolition of the system. The other

view (and this was urged by some Hon'ble members in the Lower House) was that the sanctity of contracts must be observed and that irrespective of the fact whether the terms were unconscionable or not the existing agencies must not be touched. That provided the greatest difficulty, and while it is true that the Government has always been prepared to observe the sanctity of contracts, they came to the opinion that it was equally true that it was the duty of the Government to stop abuses by legislation, should there be proof in support of them even if it required affecting the subsisting contracts. In this case, on the materials which were placed before the Government, they came to the conclusion that there was abundant evidence available to show not only that there were abuses in some directions but that they needed immediate stopping.

(*Council of State*, 12-10-1936, *vide Debates, Vol. II, No.* 8. *pp.* 4-5).

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1·*34.*

Now, if I may, with your leave, draw the attention of the House to the various provisions which have been made in this behalf, I ought to begin in the first instance with clause 2, where in section 9A the managing agent has been defined. I must confess that the question of definition gave us not a little trouble, but the definition which has been evolved, you will find, has met with the approval of all sections in the sense that no one has been able to give a better definition or suggest a better definition. The definition makes it clear that managing agents are after all under the control of the directors, but that the extent of the control is limited, and depends upon the delegation which the directors of the company agree to make under the agreement. We next come to clause 44 which contains all the provisions relating to managing agency in general. The new section 87A limits the term of appointment, as I have said, to 20 years. I think it is only right and proper to indicate that in this matter the Government chose to differ, and differ for good reasons, from the recommendation made by the Special Officer.

In Section 87B, we have the power of removing the managing agents for certain offences proved in court. Then we have the invalidating of the assignments of their remuneration. A managing agent would not hereafter be able to transfer his office without the consent of the shareholders. Lastly, there is no compensation to be allowed to a managing agent on winding up if he is accessory to or if he has hastened the winding up by his negligence. Clause 87C provides that future appointments can be made only on the basis of remuneration calculated on a fixed percentage of the net annual

profits of the company, with a provision for a minimum payment in the case of the profits proving inadequate. In clause 87D, loans to managing agents are debarred, and in 87D we also have a provision that no managing agent can enter into a contract for the sale of goods with a company of which he is a managing agent unless he obtains the consent of three-fourths of the directors present. In clause 87E, there is provision for the prevention of inter-investment or the making of loans to a company under the same management. In clause 87F there is provision for the prevention of the purchase of shares and debentures of a company under the same management. In 87G, there are restrictions on the powers of managing agents in regard to the issue of debentures or the investment of funds and clause 87H prevents them from entering into competitive business on their own account. Clause 87K debars them from nominating more than one-third of the total number of directors on the board. Over and above these, liabilities have been imposed upon them to see that proper books and accounts are kept and proper balance sheets are made and if Hon'ble Members will look at clause 68 and clause 69, they will find that the liabilities are not very small. I think, if you take into account all the restrictions which have now been imposed, the Hon'ble Members will agree with me that they appear at any rate at the present time, to be sufficient to deter the managing agents from going wrong in future.

(*Council of State*, 12-10-1936, *vide Debates, Vol. II, No. 8, pp.* 6-7).

* * *

1·35. Managing Agents: Proposed additional restrictions fair and just.

The provisions concerning the functioning of managing agencies incorporated in the Companies Act in 1936 were regarded by the Government as 'just and fair' and 'enough' to prevent the abuses complained of against the managing agents. The then *Law Member* the late *Sir Nripendra Sircar* listed the main recommendations of the Government for control of managing agents and expressed Government's view on their adequacy in the following words:

> I frankly admit that to some sections of the public the provisions may appear to be inadequate, while I am equally certain that the adherents of the other school will complain that these measures are too drastic. I hope and trust, however, that the provision suggested will, on a calm and dispassionate consideration, be found to be just and fair and enough to prevent the mischiefs mainly complained of.

(*Legislative Assembly*, 15-4-1936, *vide Debates, Vol. V, No.* 3. p. 11).

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1·36. Managing Agents: Restriction on carrying of competitive business.

In *Pandit Pant's* view, there should not be any limit placed on the number of directorships a person could hold or the number of companies an efficient and competent managing agent could manage, but at the same time he suggested that the directors or managing agents should be debarred from engaging in a competitive business.

> I have always held that there should be no limit to the number of directorships that a man can hold. I am also of the opinion that there should be no limit to the number of managing agencies that any competent and efficient firm may hold. But at the same time, I believe that it is against public policy to allow any man to engage in a competing business on his own account, when simultaneously he has to run another business as an agent on behalf of a principal. That would be against the very elementary canons of business morality. Now, I may inform Hon'ble Members of this House that the clause that is under discussion in substance agrees with the provisions of many of the articles of respectable companies like the Tata Steel Company. In the agreement of Messrs. Tata and Sons with the Tata Steel Company there is a provision to the effect that the managing agents will not engage in any business competing with the business of the principal concern.... That seems to me to be a conclusive argument as to why the law should make a provision of this type. Now, I will remind Hon'ble Members of the language of the original clause in the Bill as it was introduced. Section 87H in the original Bill ran as follows: "A managing agent shall not, whether directly or as managing agent for another person, engage in any business which is of the same nature as, or which is of such a nature that, it directly competes with the business carried on by a company under the management of such managing agent."
>
> Under it, the managing agent of one concern was debarred from acting as managing agent on behalf of another concern where both were run on the same lines and both worked towards the same end. That was really a provision which went beyond the requirements of the case and might have injured the growth and expansion of industry. This has been now restricted to this extent that a managing agent is debarred from engaging in business on his own account and for his own personal benefit, where such business is of the same nature as the business carried on by a company under his management.

(*Legislative Assembly*, 2-10-1936, *vide Debates*, *Vol. VIII*, *No.* 4, *pp.* 19-20).

1·37. Managing Agents: Restrictions on their tenure of appointment.

On the question of tenure of appointment of managing agents, the anomalous situation arising from the perpetuation or the long-term continuance of a managing agency firm was exposed by the late *Shri Bhulabhai J. Desai* during the discussions in 1936. He gave the well-known example of those days of the Morarjee Goculdas & Co. which managed the Sholapur Mills. He pointed out that in that case while only the label of the original name of the managing agency firm had remained, its substratum had in course of time completely disappeared. The late *Shri Desai* advocated the 'last survivor' criterion for terminating the managing agency:

> As regards the duration, questions have been raised in courts of law where numerous cases were raised and the last of them and which is perhaps known to the Hon'ble the Leader of the House, was the case of Morarjee Goculdas & Co. and managing agents of the Sholapur Mills, one of the most successful textile concerns in the whole of India if not at all events in Western India. The provision made was that Morarjee Goculdas and Company or any other member for the time being of the said company, should be the managing agents of the said company. The difficulty of perpetuation in this matter is undoubtedly one which must be avoided, for it may easily happen that in a short period of time nothing but the label remains. People and the shareholders do not realise that Morarjee Goculdas and Co. which, to their mind, concretely represent either the founder or his partner or perhaps a nominee of his during his lifetime, but, in due course of time, it is purely the label that remains and the entire substratum of that firm disappears.
>
> Now, that should undoubtedly be avoided, and the construction placed by one of the learned judges of the Bombay High Court that Morarjee Goculdas and Co. or any other company for that matter should be construed to mean nothing more than this that all the partners of the company have power in the case of retirement, death etc. to appoint nominees to fill up their places but as soon as the last survivor of partnership is gone, that company should not be able to perpetuate itself as claiming the right to continue to be managing agents of the company. This has been sought to be made in the proposed Bill by a twenty-year period of duration. Whether that is advisable or whether any alternative form which I suggest is advisable is a matter that should I think be considered, for indeed many of the managing agents claim and might reasonably claim that so far as those men who were responsible for the promotion of the company and on whose credit shares were subscribed and by whose efforts the company became successful, so long as these or any of

> *them remain, it should not be a matter of duration by a number of years as duration by the life of the survivor* of those who made the company possible at all.
>
> It is in that way that the future of the managing agents lies, but not in its extinction or abolition, but to provide for the duration of the lives of those who have been managing agents, and terminate in that way or by a period of time.

(*Legislative Assembly*, 15-4-1936, *vide Debates, Vol. V, No. 3, p.* 15).

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1·38. Managing Agents: Irrevocable nature of agreement.

The late *Shri Bhulabhai J. Desai* stressed the need for changing the position of managing agents enjoyed under the umbrella of a clause in the memorandum of association which made the appointment and remuneration of managing agents irrevocable and unalterable. Apart from this, he also wanted the basis of remuneration of managing agents *i.e.*, the turnover criterion of remuneration to be changed. On the first point the late *Shri Desai* said as follows:

> The first to which I wish to call attention is a matter that has been somewhat common in the formation of companies in earlier days where the appointment of the managing agency system is to be found as one of the clauses in the memorandum of association, a subject-matter that has led to a considerable amount of litigation and difficulty. It has been argued on the one hand that that clause is unchangeable in that it is only particular clauses and provisions which, under existing Act, Section 12, are alterable and it has been strenuously argued in many courts of which I have knowledge—and it is to be found in the law reports—that managing agents appointed by a provision in the memorandum of association are both irremovable and also argued, to their disadvantage, that the terms of remuneration are also equally unalterable, and I hope and trust that some place will be found to incorporate some of the decisions on this basis that, inasmuch as the provisions for managing agencies which existed in the memorandum are not *per se* necessray, for that purpose they should be treated as they exist as if they were only matters provided for in the articles, so as to enable the shareholders of the company to alter them from time to time. It is a matter that requires particular attention, for the reason that it has been a matter that has worked both ways—remunerative to those who were appointed agents and at the same time there being the impossibility of remunerating them as the business of the company expands.

(*Legislative Assembly*, 15-4-1936, *vide Debates, Vol. V, No.* 3, *p.* 14).

* * *

1·39. And on the use of turnover as the basis for remunerating the managing agents, the late *Shri Desai* spoke as follows:

> The next question to which I wish to call attention is the one that concerns the basis of remuneration of managing agents. It would be profitable if the general opinion tended to provide that the basis of remuneration shall be a percentage on the net profits of the company together with such further allowances for office management as may be required or considered to be adequate, but in no case should the remuneration of the managing agents be based on what was called the outturn. Most of the earlier agency companies have these provisions; whether the company prospered or it did not, it was on the manufactured products of the company and its value that the agency commission has frequently been so based that, while the company possibly was losing, the managing agents were constantly drawing large sums of money. It is, therefore, essential to bear in mind that in future the fortunes of managing agents should be coupled with the fortunes of the companies, and the best and easiest way to do that is to provide that, so far as their remuneration is concerned, excepting the question of office maintenance, it should be based on no other basis than the net profits earned.

(*Legislative Assembly*, 15-4-1936, *vide Debates, Vol. V, No.* 3, *p.* 15).

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1·40. Foreign Companies: Preparation of Accounts

A suggestion for imposing an obligation on foreign companies having a place of business in India or operating in India to prepare and file their balance sheets in the same manner as the companies registered under the Indian Companies Act did, was made in 1936. This move, however, failed at that time and it was only after twenty years in 1956 that the proposal found acceptance in Section 594 of Companies Act, 1956.

In 1936, *Shri S. K. D. Paliwal* moved the following amendment:—

> "For sub-section (3) of Section 227 of the said Act and the proviso thereto, the following sub-section shall be substituted, namely:—
>
> (3) Every company to which this section applies shall in every calendar year make out a balance sheet in such form and containing such particulars and including such documents, as under the provisions of this Act, it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting and deliver for registration a copy of that balance sheet to the registrar of the province in which the company has its principal place of business; and if any such balance

sheet is not written in the English language, the company shall annex to it a certified translation thereof."

Shri Paliwal's amendment was supported by *Pandit Govind Ballabh Pant* in the following words:—

In these circumstances, I see no reason whatever why we should not incorporate this section of the English Act when we have included every other part of that Act in our law. It is also a question, I submit to a certain extent, of our national status. I will not be obsessed by it because we are here concerned with matters of business. But when a company incorporated in India has to comply with the law framed in England in the light of and out of regard for the circumstances of companies incorporated in England, there is no reason why we should not require companies incorporated outside India to comply with our normal law. In fact, I could have understood if a provision had been made here making things more stringent for them than in the case of our own companies; for, so far as our companies are concerned, we may get information about their affairs even without looking at the balance sheet; we are here in touch with them; we see their affairs being conducted, and the press and other persons acquainted with the affairs of the company can always throw light on the affairs of a company incorporated here. But as regards the companies incorporated abroad, unless we have at least these documents which we consider necessary in the case of companies incorporated in our own country, I see no reason why we should depart from the general rule. The Hon'ble the Law Member told us the other day that there is a provision in existing Act by virtue of which the Governor-General or the Government of India can exempt companies from the operation of the ordinary rule. In fact, what the present Act lays down is this: that a company may either file a balance sheet in the form in which it has to file it in the country where it was incorporated, or it may file a balance sheet in the form prescribed here and in the latter case, it may make a variation with the permission of the Governor-General; but where a company put in a balance sheet which it had to file before the registering authority in the country where it was incorporated, no exemption was needed at all. So if the numbers of exemption were not high so far, that is easily explicable; but hereafter if you give such authority to the Governor-General or if you make a rule that departs from the general balance sheet, then in most cases there will be a departure from the form prescribed for our own people here.

(*Legislative Assembly*, 7-10-1936, *vide Debates, Vo. VIII, No.* 7, pp. 15).

PART II

PART II

PARLIAMENTARY DEBATES ON COMPANIES BILL, 1953

This Part contains about one hundred and forty important extracts from Parliamentary debates on the Companies Bill, 1953, during 1954-55. These extracts relate to the following aspects of the company law discussed during the debates:—

(a) Company promotion, formation and capital structure of the companies;

(b) Company meetings and procedure;

(c) Presentation of company accounts, their audit and the powers and duties of auditors;

(d) Inspection and investigation of the affairs of companies;

(e) Formation of boards of directors and the powers and duties of the directors; and

(f) Terms and conditions of the appointment of managing agents.

For the sake of convenience, the extracts have been grouped into eight sections, and as said in the Editor's Note. these have mostly been taken from the speeches of the Ministers who gave official view on important matters concerning the management of the affairs of joint stock companies in this country. The eight sections are:

1. Historical Background and Objectives of the new Companies Act.
2. Administration of the Companies Act.
3. Restrictions and powers under the new Companies Act.
4. Provisions concerning Directors and Board of Directors,
5. Managing Agency System,
6. Secretaries and Treasurers,
7. Managerial Remuneration, and
8. Miscellaneous.

SECTION ONE

HISTORICAL BACKGROUND AND OBJECTIVES OF THE NEW COMPANIES ACT

2:1. Historical Background: New company law a result of long deliberative study.

That a large measure of thinking and deliberation has gone into the preparation of the new law was emphasised by *Shri C. D. Deshmukh* in his speech at the time of moving the House to take the Companies Bill into consideration in the Lok Sabha on the 10th August, 1954. He pointed out that Governmental thinking on the new measure started just after the close of the World War II. As a concomitant to the war-time tremendous expansion of commercial and industrial activities many a new practice of company management and investment had developed which led people to believe that all was not well with company management in our country. Taking note of this uneasiness in the public mind, Government initiated action for the reform of company law in 1946 which ultimately ended with the codification of the new law in 1955. This was emphasised by *Shri Deshmukh* in the following words:—

> One way or another, the subject of company law reform has been before the Government for about nine years and therefore, nobody concerned with it can be accused of proceeding with any kind of haste. Some kind of strange destiny seems to be dogging this measure. That is to say, this question of company law reform, as the House is aware, was last comprehensively reviewed in 1936 but before the amended law had time to operate, the Second World War began and during the period that it lasted—that is to say, till 1945—there was a tremendous expansion in commercial and industrial activity. Money was very easy to make and there was an exaggerated feeling of confidence in the minds of entrepreneurs as well as the private investor. As a result, a great many ventures were launched soon after the war. But it soon became clear that all was not well with company management and that was how in 1946 the first step was taken to review again the working of company law.

(*Lok Sabha*, 10-8-1955, *vide Debates Vol. V, No.* 13, *Col.* 9800).

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2·2. Historical background: Impact of socio-economic changes on the company law

The changes in the economic scene in the country and the shift in socio-economic ideologies and philosophies find expression in the provisions of the new Companies Act. While the old Act of 1913, by and large, carried the imprints of the *'laissez-faire'* thinking of the olden days, the new law takes note of the changes in the socio-economic conditions in the country since 1939 onwards and the broad objectives set out in the Constitution of free India. In addition, the

basic aim of the new law still remains the regulation of the affairs of the private corporate sector so as to subserve the "common good". An indication of this is available in the following extract from *Shri Deshmukh's* speech in the Lok Sabha:—

> Now, in these two decades that have passed from 1936, the economic scene has shifted and political conditions have altered profoundly and our idealogies and philosophies have, as a result, had a change-so rich and strange. Many new factors have emerged and our approach to old ones has also altered. But the basic aim remains the same, that is, encouraging and reasonably safeguarding private investment in fields which are not marked out for the public sector and regulating it for the common good.

(*Lok Sabha*, 10-8-1955, *vide Debates, Vol. V, No.* 13, *Col.* 9800).

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2:3. Objective of the Company Law: Primary of social interests

The Joint stock companies cover a very wide area of the industrial and commercial field of our economy. The mechanics of their operations and their activities have assumed a great importance not only for such sections of the society which come in their direct contact but also for the general public as the consumer of the goods and services produced by companies. It is for this reason that the greatest consideration is nowadays given to the question of protection and advancement of 'social interests' in the discussions on company law reforms in this and other countries. The protection of 'social interests' has become an objective of over-riding importance which has to be very carefully superimposed over the rights and privileges of other parties directly interested in the corporate enterprise. Apart from this objective, there are the other well-known objectives as well, such as the ensuring of the efficiency of company management, the protection of *bonafide* rights of shareholders, creditors and other partners in the company, which are discussed in a succinct manner in Chapter II of the Company Law Committee Report (popularly known as the Bhabha Committee Report)*.

Shri Deshmukh made pointed reference to these objectives in the following words:—

> The objects underlying this reform were succinctly set out in para 16 of the report of the Company Law Committee. I can do no better than draw the attention of the House to the observations of the Committee. They said:
>
> "Company Law is primarily concerned with means and not ends. It attempts to provide a legal framework for the corporate form of business management in which organisation, capital and labour are brought together in a particular form of relationship which constitutes the essence of private enterprise. The operation of private enterprise under modern conditions must, however, be subject to the acceptance of broad social objectives and of some recognised standards of behaviour."
>
> In the words of the Planning Commission, again, private enterprise has to visualise for itself a new role and accept in

*See Extracts from the Report on the next page.

the larger interests of the country a new code of discipline.

In this view, the basic problem of company law is to consider to what extent it is possible to adjust the structure and methods of the corporate form of business management with a view to weave an integrated pattern of relationship as between promoters, investors and the managements, so that the following ends may be secured: (I) the efficiency of corporate business may be increased as measured by accepted standards, (2) managerial efficiency may be reconciled with the legitimate rights of investors, and (3) the interests of creditors and other partners in production and distribution may be duly safeguarded and (4) the attainment of the ultimate ends of social policy, including labour relations, may be helped and not hindered by the manner in which the corporate form of business organisation works in this country.

Hon. Members will appreciate that the fundamental problem underlying the Bill is thus a problem of balancing private and social interests—a problem which is never easy of solution, and in the case of company law, has been rendered more difficult by the complicated nexus of relationship which has been built up over the years between the promoters, the investors and the management of a company.

(*Lok Sabha*, 28-4-1954, *vide Debates, Vol. IV, No.* 55, *Cols.* 5969—5971).

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*A broad indication of the objectives kept in view in introducing the reforms in the company law is available in the Government of India Resolution No. 23(31)Law(CL)/48, dated 28th October, 1950, by which the Company Law Committee was formed. The appointment of this Committee was made by the Government after considering the recommendations made by Tricumdas Dwarakadas in 1947, the report of Shri V. K. Thiruvenkatachari in 1948 and the Memorandum on the Amendment of the Indian Companies Act drawn up in the former Department of Commerce in 1949 on which comments from the organized trade and industrial organisations the High Courts, the State Governments and the general public had been invited. These Comments were also taken into account at the time of the formation of this Committee. The terms of reference of the Committee were:

"(1) Having due regard to the conditions necessary for the healthy growth of joint stock enterprises and the desirability of adequately safeguarding the interests of investors and the public, to consider and report what amendments are necessary in the Indian Companies Act, 1913, as amended by Act XXII of 1936 with particular reference to—

(a) the formation of companies and the day-to-day conduct of their business;

(b) the powers of the management *vis-a-vis* shareholders and the relations between them;

(c) the safeguards required against abuse of such company practices as the interlocking of directorates, voting control by majority interests in company ownership and management etc. which may be prejudicial to the public interest;

(d) the measures necessary to promote efficient and economic management of companies.

(2) To consider and report on any other matter incidential to the administration of the Indian Companies Act, in its bearing on the development of Indian trade and industry.

2·4 By way of further elucidation of what *Shri Deshmukh* had said about the objectives of the new law, the then Minister for Revenue and Civil Expenditure, the late *Shri M. C. Shah* made the following observations in the Rajya Sabha. While explaining the objectives, *Shri Shah* quoted from Chapter II of the Company Law Committee Report:—

> At this stage, therefore, all that I propose to do is to elucidate, very briefly, the principal objects underlying our proposals. These were summarised by the Company Law Committee in paragraph 16 of its report, and I can do no better than repeat what the Committee has stated. In chapter II of its report the Committee explained the nature and scope of the enquiry entrusted to it. I would particularly draw the attention of the Hon. Members to this Chapter in the Committee's report, for it contains a short but succinct exposition of the philosophy underlying the Committee's approach to the problem of company law reform, and its recommendations on this subject. In its view, the problem of company law reform was to consider the extent to which it was possible to revise the structure and methods of the corporate form of business management in this country, so that not only would the conflicting interests of promoters, investors and the management be integrated into a coherent relationship within the structure of a company, but also the activities of the company itself would be fitted into a pattern, where the private interests of the parties concerned in its formation and management would not run counter to the social purpose which it must ultimately subserve. In specific terms, the Committee visualised that this objective implied suitable changes in company law which would ensure that—
>
> (i) the efficiency of company management was increased;
>
> (ii) the initiative and efficiency of the managerial elements was reconciled with the *bona fide* rights of shareholders;
>
> (iii) the interests of creditors, labour and other partners in production and distribution were adequately protected; and
>
> (iv) the activities of companies were carried on in a manner which not only furthered the development of trade and industry in this country but also helped the ultimate objects of our social policy. The operative provisions of the Bill now before us attempt to secure these objects by introducing suitable changes in the present law.

(*Rajya Sabha*, 12-5-1954, *vide Debates, Vol. VI, No.* 45, *Cols.* 6201—6203).

* * *

2:5. Further, what the actual impact of the recommendations of the Company Law Committee would be on the company management in

the country was explained by the late Shri M. C. Shah, the then Minister for Civil and Revenue Expenditure in the Rajya Sabha, with special reference to the observations of the Bhabha Committee:—

> *In order to appreciate the bearing of the major changes introduced in the Bill, one has got to study very closely its* detailed provisions and to evaluate the proposals contained in them in the light of the experience of the working of joint stock companies in the past, and the potentialities of this form of organisation for the future. Throughout its report, the members of the Company Law Committee took great pains to emphasize these two aspects of its recommendations. "Our proposals", the Committee observed, "attempt to secure the fullest practical measure of disclosure, of information relating to the activities of companies, and the imposition of such restrictions on these activities as we have considered necessary in the present state of company practice in this country. Some of the restrictions will, no doubt, appear irksome to business which is conducted in an efficient and honest manner but reforms in all fields of group activity must necessarily be based on average behaviour. It is part of the social discipline of our times that institutions no less than individuals, which are in advance of the average standard, have to submit themselves as much to the rigours of the law as those that are below that standard. Nevertheless, we have taken all possible care to see that our recommendations do not impose any unreasonable burden on legitimate business. In arriving at our recommendations we have constantly borne in mind the twin objects underlying them, *viz.*, the need for eliminating abuses and harmful practices on the one hand and for providing sufficient flexibility in the law on the other hand". It is in the light of these general principles that I would now invite the Hon. Members to consider the proposals contained in the Companies Bill.
>
> (*Rajya Sabha*, 12-5-1954, *vide Debates, Vol. VI, No.* 45, *Col.* 6209).

* * *

2·6 The point regarding the 'social purpose' made by *Shri Deshmukh* in the course of his observations on the basic objectives of the new Act was also stressed by *Shri Asoka Mehta* in the following words:—

> As the Mover (Shri C. D. Deshmukh) has explained, the need for revising and amending the company law arose from the fact that this mismanagement has existed in the past. But there is another aspect of the question also to which attention needs to be given. It is not always realised that there is what is known as the social cost of private enterprise.....It is the duty of this House, the custodian of the welfare of our people, to see that care is taken that private enterprise does not grow at the expense of or by piling up of social costs upon the community. All the same, I agree with the Mover that our approach to the Bill should be from the point of view

of functional efficiency because we are likely to expand the private sector considerably in the Second Five Year Plan period, and we are anxious to see that conditions are created where this development can become healthy and fruitful.

(*Lok Sabha*, 10-8-1955, *vide Debates, Vol. V, No.* 13, *Cols.* 9827-9828).

* * *

2:7. Objectives of the Company Law: Protection of shareholders' interests.

The protection of shareholders' interests is an important purpose of the company law. The main reason for providing protection to the shareholders is that "they are not in a position to hold their own" against the management or the majority of the shareholders who may be under the influence of the management. *Shri Deshmukh* referred to this important objective in the following passage:—

> There are other points about safeguarding the interests of the shareholders. We can say that that is the main purpose of the Bill and a series of provisions have been made for intervention by Government or the court for the purpose of safeguarding the interests of the shareholders, who is not in a position to hold his own—I think that is generally admitted—against the management or the majority of shareholders. There is the power of the Registrar to call for information—clause 219; there is the power of the Government to investigate into the affairs of the company on the application of the shareholders or on the Registrar's report or of its own motion—clauses 220 and 221; power of the Government to investigate into the affairs of other companies managed by the same managing agents, clause 223; power for bringing legal proceedings against the directors, managing agents and officers of the company in case of prosecution for an offence for which they are criminally liable, clause 226; and finally, the provision to which I have already made a reference, that the power of the shareholders to move the court for relief when the affairs of the company are conducted in a way prejudicial to its interests. Two Hon. Members urged that adequate provision should be made to safeguard the interests of the depositor. There is some sort of provision and it will be for the Select Committee to take note of what is undoubtedly a very serious evil and menace in some parts of the country, and perhaps before the unwary public.

(*Lok Sabha*, 3-5-1954, *vide Debates, Vol. IV, No.* 59, *Cols.* 6407-6408).

* * *

2:8. Protection of Shareholders' Interests: Provisions of the law offer palliatives and not permanent cures.

For the protection of the shareholders' and depositors' interests a series of palliatives are available under the scheme of the new

Companies Act. While, no doubt, these measures would have some effect, a great deal could be achieved only through educating the public against bad business practices resorted to by unscrupulous and unsocial elements in the corporate field. The law cannot be expected to cover all the exigencies and provide comprehensive anticipatory remedies for these practices. *Shri Deshmukh* made this point in the following words:—

> It will be remembered in connection with the whole of the Bill that, although there are palliatives against gullibility or greed, there are no permanent cures, human nature being what it is.
>
> On being asked if *human nature can be cured*, *Shri C. D. Deshmukh* said: Not in the short run and not by legislation, but it is a matter of public education. I have no doubt that if we let in the lime-light of truth on the transactions complained against, then, in time, the public will be far more cautious and far more prudent, but at present, the moment one finds that somebody offers a rate of interest slightly higher than that obtainable on Government securities, banks and so on, then people rush and put in their money in that business venture, with consequences very largely disastrous for them.

(*Lok Sabha*, 3-5-1954, *vide Debates, Vol. IV, No.* 59, *Col.* 6408).

* * *

2:9. Dynamic nature of company law

The company law must change with the time and take note of the dynamics of trade and industry. It could not be static and permanent while the basic social and economic philosophies and techniques of production and investment in the industrial sector change from time to time. These changes have to be duly taken note of in the company law reforms. These ideas find expression in the following observations of *Shri C. D. Deshmukh*:—

> It is futile to claim perfection for a measure of this size and complexity and I am fully aware that, notwithstanding the amendments which we intend to move and which perhaps other Members might wish to move, the Bill, even after it is passed by the House, might contain defects and deficiencies which might not have come to light. Nobody who is familiar with development of company law in other parts of the world, need feel unduly depressed by this fact. It is in the essence of company law that it must not only grow with the growing needs of trade and industry, but also be re-shaped from time to time to meet unforseeable changes in company practice as may result either from developments in techniques of production or investment, or may be contrived by the wit of man to evade the provisions of the existing law, and for what I know many wits are already busy at this game. Indeed, the success of company law in any country depends on the promptitude with which it can

adjust itself to meet changes in the structure and functioning of companies in future as well as in the alterations that take place in basic philosophies.

(*Lok Sabha*, 10-8-1954, *vide Debates, Vol. V, No.* 13, *Cols.* 9817-9818).

* * *

2:*10. Shri C. C. Shah* referred to the dynamic nature of the company law in the following words:—

> This massive piece of legislation which we are shortly going to put on the statute book is important not only because of its magnitude but also because of its far reaching consequences in our economic and also partly in our social life. Law, after all, reflects and ought to reflect the relations which exist or ought to exist between man and man in any society. And, with changed conditions and with social and economic changes, the law, if it is to remain dynamic and helpful, must change. A major revision of the company law was undoubtedly called for, for the last major revision was in 1936 and the world has changed and India has changed greatly after war.

(*Lok Sabha*, 10-9-1955, *vide Debates, Vol. VII, No.* 36, *Cols.* 13175-76).

* * *

2:*11.* Further, on the need to amend the Companies Act from time to time for plugging the loop-holes therein, *Shri C. C. Shah's* following observations are worth notice.

> Like income-tax, which is a prepetual tug-of-war between the tax-gatherer and the tax-payer, company law is also a sort of perpetual tug-of-war between those in management and those for whom it is being managed, and their effort always appears to be to find as many loop-holes as possible to evade the law. As the Finance Minister rightly said, probably they are at their game even now With all that we are providing for in this Bill, it will not be possible to plug all the loop-holes and yet I am not one of those who believe that we should give up our efforts.

(*Lok Sabha*, 13-8-1955, *vide Debates, Vol. V, No.* 15, *Col.* 10123).

* * *

2:*12.* Size and complicated nature of the new company law

The new Companies Act has been widely commented upon as a mammoth piece of legislation with a very large number of sections and clauses. As to how this growth of sections has taken place was explained by *Shri Deshmukh* in the following words :

> The Bill is both, one must remember, a consolidating and amending measure. As mentioned in the Statement of Objects and Reasons, this is the first opportunity which has occurred since 1913 for the consolidation of the Companies Act. Advantage has, therefore, been taken of this opportunity to redraft the Act comprehensively. In the redraft several long and complicated sections in the

present Act have been split up into a large number o. shorter clauses. This is the largest single factor accountable for the increase in the number of clauses in the Bill. New clauses embodying substantial changes in the present law would hardly constitute more than a shall fraction of the Bill.

(*Lok Sabha*, 28-4-1954, *vide Debates, Vol. IV, No.* 55, *Col.* 5960).

* * *

2.13. Apart from for its enormous size, the new law has also been criticised for its complicated network of provisions. But that the complexities in an Act like this were inescapable, was explained by the then Minister for Revenue and Civil Expenditure the late *Shri M. C. Shah* in the following words :

> The company law is, by its very nature, very complicated. For, it deals with the conflicting rights and obligations of different groups of people whose interests do not necessarily coincide, but which have, nevertheless, to be balanced and reconciled within the framework of the legal institution which goes by the name of 'joint stock company'. It is not easy to reduce, into simple terms, the complicated nexus of relationships between the different interests concerned in the promotion, formation, management and liquidation of a company. No modern system of company law, anywhere in the world, has been able to resolve these complexities into a set of simple provisions, readily intelligible to the man in the street.

(*Rajya Sabha*, 12-5-1954, *vide Debates, Vol. VI, No.* 45, *Col.* 6199-6200).

SECTION TWO

ADMINISTRATION OF THE COMPANIES ACT

2·14. New approach of centralised administration.

From the very beginning, company legislation in India has been a central law. Presumably on grounds of expediency, the Central Government had entrusted its administration to the State (then called Provincial) Governments. This delegated arrangement continued right upto 1955. Under the old arrangement, however, the administration of the Act by the State Governments had been found to be unsatisfactory and perfunctory. Competent observers of the corporate scene in the country had stated before the Company Law Committee that "the Indian Companies Act, was, perhaps, the most under-administered of the Central Acts relating to trade and industry." Under the old administrative arrangements, the Registrars of Companies were "essentially filing Registrars, working under the general control and supervision of the State Governments". The full social and economic implications of the company law were hardly recognised by the authorities concerned and the "administration of the Act was regarded primarily as the negative function of preventing the joint stock companies from contravening its statutory requirements". Even with regard to this rather limited objective, the vigilance was very much relaxed and the fear of law was almost absent, and people perverted "the provisions of the company law to serve their private ends" specially during the World War II and post-war years. With this experience of the past, it was felt that a strong and competent central authority should be created for the administration of the Companies Act. This new authority would keep a "continuous watch over the working of joint stock companies", and would administer it with a positive sense, *i.e.* with the realisation that to the extent possible and within the framework of the law, it would administer it in such a way that the general state of economic health of the country would be improved.

On the question of administration of Companies Act, there was complete unanimity in and outside Parliament that Central Government should resume the responsibility for its administration. The opinion was, however, divided on the exact form of the central organisation to be set up. *Shri Deshmukh* referred to the resumption of administrative responsibility for the Companies Act by Central Government as follows :

> Government have, however, already accepted the recommendation of the Company Law Committee that the Central Government shall resume this responsibility for the administration of joint stock companies which it had delegated to the State Governments. This was the first necessary step in this scheme of our reorganisation. But,

it was explained in the Statement of Objects and Reasons that although the Company Law Committee had recommended the establishment of a *statutory authority at the centre, under the new Act, for the administration of the company law, and for the discharge of other* related functions, *for instance, capital issue control, regulation of stock* exchanges, when a Central measure for this purpose was passed, Government considered that for the time being, at any rate, it was desirable to set up an organisation directly under the administrative control of the Government and to defer the conferment of statutory status on this organisation to a later date. In pursuance of this decision, a Central organisation has been set up under the Department of Economic Affairs. This organisation will have regional offices in important centres of trade and industry and will be in over-all charge of the administration of the Companies Act through its regional offices. The Registrars of Joint Stock Companies will be under the direct control and guidance of this Central organisation. The organisation is now in the process of being built up and it is my hope that when it is fully established, it will constitute an important administrative reform and will be a major step in strengthening and improving the administration of the Companies Act all over India.

(*Lok Sabha*, 28-4-1954, *vide Debates, Vol. VI, No.* 55, *Cols.* 5968-69).

* * *

2·15. Reasons for setting-up departmental authority.

On the controversial question as to whether a Departmental Authority or a Statutory Authority should be established for the administration of the Act, *Shri Deshmukh* announced the decision of Government in favour of the first alternative and gave the reasons for the same as follows :

> The House might recall that in my speech moving for reference of the Bill to the Joint Committee, I had outlined the plans which I had in view for the administration of the Companies Act and related matters. I then explained why we had taken a provisional decision not to set up statutory commission as recommended by the Company Law Committee,* but had added that in this matter as in many others Government would be guided largely by the views of the Joint Committee. The subject was discussed at some length in the Committee and finally the Committee approved of the establishment of a strong central organisation for the administration of companies and related subjects. The Committee favours the establishment of a central department functioning

*The case for the setting up of a Statutory Authority was presented thus by the Company Law Committee. The Committee's views were often quoted in Parliament in support of Statutory body. (*contd.*)

directly under the Minister-in-charge, and the more I think of it, the more I consider that it is a right decision. There are so many powers the exercise of which involves the decision of questions of policy and I cannot readily conceive of any statutory commission which is bound to be autonomous exercising these kinds of powers on behalf of Government, because their exercise goes to the root of the economic conditions in the country. Therefore, I think the House would approve of the arrangement recommended by the Joint Committee. They will be glad to know that we have already acted on this in advance of approval by the House and have set up a new department within the Ministry of Finance for this purpose. The responsibility of this department will include not only the administration of the Companies Act, but also such other institutions as are closely connected with the operation of companies, *i.e.*, stock exchange, financial corporations, capital issue control etc.

(*Lok Sabha*, 10-8-1955, *vide Debates, Vol. V, No.* 13, *Cols.* 9818-19).

* * *

"There are two ways of organising the Central Authority that we propose—

(i) there may be a Central Department dealing with joint stock companies (and, if necessary, with related institutions, *e.g.*, banks, insurance companies, stock exchanges, etc.) analogous to the corresponding organization under the Board of Trade with local Registrars working in the regions entrusted to them; or

(ii) there may be a Central Statutory Authority with the regional offices in charge of local Registrar under its control and guidance.

We have carefully considered which of these two types of organisation would be suitable to this country. A great majority of witnesses, who appeared before us, favoured a statutory authority created under the Indian Companies Act, in preference to a purely departmental organization. Each of these types has its advantages and drawbacks. While a departmental organization will be simpler to work, a statutory authority will create more confidence and possess more elasticity and initiative. We, are, therefore, strongly in favour of a statutory authority for this purpose. This does not mean that the Central Authority would function in isolation from the main currents of economic policy, that may be adopted by the Government of the day.

Clearly major issues of economic policy relating to the private sector of the country's economy, in so far as they bear on the working of joint stock companies must ultimately be matters for Government, although we visualise that the Central authority along with others would be closely connected with the formulation of such policy in its formative stages. But, once these issues of economic policy have been settled, and embodied in legislative or executive decisions, the application of the accepted principles to individual companies, whether in respect of their formation or working should, in our view, be the responsibility of a quasi-independent authority which will examine the technical problems involved, in as detached a manner as possible and be guided solely in this regard by the general directions given to in an Act or in a recorded executive decision of Government as a whole. It is only in this way it can maintain its independent character, avoid suspicion of bias or partisanship in the discharge of its functions.

(Quoted from pp. 193-194 of the Company Law Committee Report, 1952).

2:16. The conferment of extensive powers on the authority charge of the *administration of the Companies Act was inescapab in a situation where regulation of company affairs had to be* effective and a certain degree of flexibility in law and its administration was called for. For this purpose it was necessary that the Government department set up to look after the *administration of company law*, should be properly organised. This was emphasised by *Shri Deshmukh* in the following words :

> As far as I could see, if the twin requirements of the effective regulation of company affairs and the need for flexibility in law and administration were to be secured, there was no escape from the conferment of extensive powers on the authority responsible for the administration of the Companies Act. Since Government have taken the view, a view which has now been endorsed by the Joint Committee, that this responsibility cannot be properly delegated to any authority outside Government, the only issue of practical importance seems to be whether the internal structure and working of the Government Department entrusted with this responsibility would be such as would ensure effective control and supervision over the actual exercise of powers by it.

(*Lok Sabha*, 10-8-1955, *vide Debates, Vol. V, No.* 13, *Col.* 9821).

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2:17. Administration of Companies Act: Problem of personnel.

While dealing with the controversial issue of the type of organisation to be adopted for the administration of the Companies Act, *Shri Deshmukh* mentioned that the "real problem is the question of personnel". Without proper personnel, neither the Statutory Authority nor the Departmental Set up would succeed in administering the Act properly. He referred to the issue of personnel in the following words :

> The real problem is the question of personnel. Whether you manage a thing departmentally, or whether you manage it through some statutory corporation, one need not assume that the proper personnel would be available. It is the man and not the machine that matters. You may have all the apparatus of a statutory commission, and yet find that you cannot locate a proper person for guiding its affairs in which case you shall have gained nothing and indeed might have introduced complications; whereas if you manage departmentally, it is much easier to make changes in case such changes are called for. So these are the reasons, why we thought that at the moment the Central statutory authority should be a departmental body.

(*Lok Sabha*, 3-5-1954, *vide Debates, Vol. IV, No.* 59, *Col.* 6414).

* * *

2:18. Administration of the Companies Act: Departmental set up a solution of problem of representation of conflicting interests.

Clarifying his views further on the question of setting up of a Statutory Authority, *Shri Deshmukh* pointed out that it would be difficult to reconcile the conflicting aspirations and expectations of different sections of the public in the country which would like to have representation on such a body. Considering the difficulties involved in making the selection of the representatives of the various contending interests, the Joint Committee's recommendation for establishing a Departmental Authority seemed to be more appropriate. *Shri Deshmukh* expressed his views on this issue in the following words.

> I am amazed at the persistence with which it is urged by Hon. Members, because I see different men expect different things out of the statutory commission. Therefore, it will be the subject of speculation as to who is going to be appointed. If a businessman is appointed people will say: "Good Lord, what has been done? There is a statutory commission now and we cannot trust it". The same Members will come again and say: "That is very wrong. Government should take over these powers." If on the other hand someone else is appointed the whole business-world would be up in arms and they will say: "Are our fortunes to be entirely at the mercy of a statutory commission?" Therefore, I suggest here that the entire scheme that has been put forward by the Joint Committee is a very wise scheme.

(*Lok Sabha*, 19-8-55, *vide Debates, Vol. VI, No.* 19, *Cols.* 10525-526).

* * *

2:19. Administration of the Companies Act: New Department to be a major factor in the functioning of private sector.

That the new Department would contain the necessary expertise for undertaking the responsibility for directing "proper functioning of the private sector of our economy" was emphasised by Shri Deshmukh:

> It will necessarily take some time to build up this new department and it is my hope that when it is fully staffed and equipped with the necessary expertise it will prove to be a major factor in the proper functioning of the private sector of our economy.

(*Lok Sabha*, 10-8-1955, *vide Debates, Vol. V, No.* 13, *Col.* 9819).

> It is my hope that after the department has been fully built up, it will be adequately equipped to undertake the heavy responsibilities which will devolve on Government under the new Act.

(*Lok Sabha*, 19-8-1955, *vide Debates, Vol. VI, No.* 19, *Col.* 10528).

* * *

2·20. Administration of Companies Act: Lord Cohen's view.

For the administration of modern company law in a satisfactory manner, it was necessary to give discretionary powers to the executive set-up which is to be manned by a "strong and competent civil service". Shri Deshmukh first expressed this point of view in the Lok Sabha on 28th April, 1954 when he moved the Bill to be taken into consideration by Joint Committee and then again adverted to it on the 10th August, 1955 when the main debate on the Companies Bill was started in the Lok Sabha. In support of this view, he quoted Lord Cohen, who headed the Company Law Reform Committee, 1943—45 in the United Kingdom.

Speaking on the first occasion *Shri Deshmukh* said:

> But Hon. Members will expect me to say a few words about our plans for the administration of the Companies Act in future. Mr. Cohen, Chairman of the Cohen Committee in the U.K. himself a great authority on commercial and mercantile law in the country, once observed that no modern system of company law can be satisfactorily administered except through a strong and competent civil service, for, it was of the essence of any such system that effective powers must be given to the executive and a large measure of discretionary authority must of necessity be vested in the organisation responsible for the administration of the Companies Act. I share these views and I am therefore fully seized of the importance of building up such an administrative organisation.

(*Lok Sabha*, 28-4-1954, *vide Debates, Vol. IV, No.* 55, *Col.* 5968).

* * *

2·21. Administration of the Companies Act: Responsibility cast on the Government.

The obligations and responsibilities placed on the Government for the exercise of the powers under the various sections of the new law, are a "measure of the complexity of the Bill" which is unavoidable in modern times. *Shri Deshmukh* referred to this in the following words:

> I am aware that some Members of the Joint Committee do not feel very happy about the departmental organisation, and the powers of detailed regulation which have been conferred on the Central Government under the provisions of this Bill. Well, I can assure the House that we feel no less worried by the heavy burden and responsibility which the Bill cast on us, and nothing would have pleased us better, had it been possible to frame the provisions of the Bill in such a way as to reduce the need for detailed regulation to a minimum. But the House should appreciate that the obligations which have been cast on the Central Government are only a measure of the complexity of the Bill.

(*Lok Sabha*, 10-4-1955, *vide Debate, Vol. V, No.* 13, *Col.* 9820).

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2.22. Administration of the Act: Judicious use of powers by the Government.

The use of the powers under the provisions of the Act would be sparing and judicious. On behalf of Government, *Shri Deshmukh* gave this assurance in the following words:

> The vesting of these powers of regulation in Government does not mean that they will be exercised or need to be exercised every now and then. While it may be true that uncontrolled power corrupts, it is no less true that the possession of power itself often obviates the necessity of its exercise. And that has been borne out by our experience of the working of the temporary amendment Act of 1951. I am not aware of any serious complaints having been made by the interests concerned either of delay or of harrassment or of oppressive decisions.

(*Lok Sabha*, 10-4-1955, *vide Debates, Vol. V. No.* 13, *Col.* 9822).

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2.23. Administration of the Act: Faith in Government needed.

Shri Deshmukh pleaded with Parliament that the general scheme and structure of the Companies Bill and its clauses, as they came out from the Joint Committee, should not be watered down or changed. The powers should be given to the Government to sift the circumstances in special cases and to pass appropriate orders accordingly; for this Government should be trusted with "a modicum of honesty and a sense of responsibility". He spoke about it in the following words:

> I have not got much time to elaborate on this matter but there is one observation I should like to make, and that is, some of these powers are of a formal nature, some of them have been taken over from the 1951 amendment which is now being sought to be made permanent, but the few there are, are powers to enable Government to deal with special cases. The reason is this. According to the scheme of the Bill, we felt that although the scheme might suit the generality of cases, there might be certain instances in which an exception must be made. Now, the alternatives were either to change the general scheme so as to water it down in order to suit the special cases or to leave the general scheme in its original rigidity but to give powers to the Central Government to sift the circumstances of that particular special case and to pass appropriate orders accordingly. I should think that the latter alternative was much more the suitable one, because the other alternative would have been weakening the general structure of that particular provision, for instance, the provision in regard to investment in companies managed by the same group.
>
> We have laid down certain percentages. It was pointed out to us that if we adhered to those percentages we might

hinder very significantly the expansion of industry *vis-a-vis* the private sector. Therefore, the question before the Committee was how to deal with this matter, and I think they have hit on a very good remedy provided Hon. Members credit Government with a modicum of honesty and a sense of responsibility.

(*Lok Sabha*, 19-8-1955, *vide Debates, Vol. VI, No.* 19, *Cols.* 10528-529).

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2·24. Administration of Companies Act: Assurance regarding quick action.

In answer to the criticism that government action in connection with the administration of the Companies Act might be dilatory, injudicious, arbitrary and obstructive to the normal activities of the companies, *Shri Deshmukh* gave a forthright assurance, dispelling the fears expressed, in the following words:

> To all those who accept that sense of responsibility all I can promise is an answering sense of responsibility, understanding, helpfulness, despatch, and above all, integrity and justice in administration. It will not be, I can assure the House, a case of justice delayed and therefore, of justice denied.
>
> I am very happy to give the assurance that has been demanded in regard to the administration; first, that it should be adequately staffed, that it should be competent, that red tape should be reduced to a minimum and that, finally, we should have a new concept of positive helpfulness; that is to say, our aim should be not to trip up the unwary but to assist actively those who seem anxious to observe the law but find themselves somewhat helpless in this welter of legislation, which I am sure will be further complicated when the rules come up almost inevitably. Therefore, we have undertaken these duties with a full sense of responsibility and almost with trepidation.

(*Lok Sabha*, 12-9-1955, *vide Debates, Vol. VII, No.* 37, *Cols.* 13276-277).

* * *

2·25. Administration of the Act: Assurance regarding non-bureaucratic approach.

In the course of the discussion of the powers conferred on Government, a mention was made of the powers exercisable with regard to the appointment and re-appointment of directors, managing directors, managers, managing agents, changes in the terms and conditions of their appointment, variations in managing agency agreements, changes in the constitution of managing agency firms or companies, increases in the remuneration of directors, managing directors or managing agents, etc. which Government had been exercising since the passing and enforcement of the provisions of

the Companies Amendment Act of 1951. It was complained that the general approach of Government towards these was bureaucratic and their decisions involved delays. On these points raised in the debates *Shri Deshmukh* spoke as follows:

> That covers many other observations much as the present scheme leads to bureaucratisation and so on and so forth. My answer is that these powers have been exercised by Government for the last three years under the Indian Companies Amendment Act of 1951. We had a very large number of cases—I think about 1,200 in three years—the bulk of which were decided within the first six months. There was not any great delay, and that was when the officer in charge more or less worked single-handed plus the advisory commission. Now, with a strengthened department we hope to reduce the period of delay in which case I think the tinge of bureaucratisation would be paler still. There is also this assurance that the Minister will be seized of all important matters that come up before this department, and whatever one might say, I do not think Ministers could be described as members of the bureaucratic frame, because, as I said, they are answerable to the House.

(*Lok Sabha*, 6-9-1955, *vide Debates*, *Vol. VII*, *No.* 32, *Cols.* 12410-411).

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2.26. In a sense, the Companies Act aims at maintaining law and order in the private sector in the country. Much success in this regard would depend on the collaboration between the regulating authority and those whose affairs are regulated. *Shri Deshmukh* spoke on this thus:

> Generally speaking, it is a question of a joint collaboration between the regulating authority and those whose affairs are regulated. So, here is a question of the maintenance of law and order, so to speak, in the private sector, as well as the question of its development on sound and healthy lines, especially in view of the Plan and the place it gives to the private sector, and to the private investment and to the volume of total savings of the community.

(*Lok Sabha*, 10-8-1955, *vide Debates*, *Vol. V*, *No.* 13, *Col.* 9822).

SECTION THREE

RESTRICTIONS AND POWERS UNDER THE NEW COMPANIES ACT

2·27. Reasons for having a large number of provisions in the Companies Act.

The new Companies Act is spoken of as containing very detailed regulations and a massive array of powers conferred on Government. The accepted social objectives and economic policies of the day are responsible for extensive and detailed regulation of the private enterprise in the country. In fact, modern business conditions and activities are so complex that a detailed regulation and a certain degree of use of compulsion by Government have become inevitable. Speaking on this question *Shri Deshmukh* said as follows:

> I do not know if all Hon. Members fully realise the logical dilemma implicit in our basic attitude towards this difficult problem of company law reform. If we could have left private joint stock enterprise alone, as it has been left more or less hitherto, obviously all that was needed was to fill in the lacunae in the existing Act and to strengthen the administration to enable it to carry on its limited duties a little better or perhaps very much better than it had hitherto done. But the compulsion of our accepted social objectives and economic policies renders this simple solution impossible. If the lessons of the past of other countries are of any use, our economy seems to be destined for an increasingly large measure of regulation and control in the social interest. The complexities of modern business inevitably determine the character of such regulation. It must either be detailed or it must remain ineffective. Basically this is the justification for the large measure of discretionary authority which has been vested in Government by this Bill. In other words, the powers which the Central Government are taking would seem to be largely a reflection of the scheme of regulation of the private sector envisaged in the Bill.

(*Rajya Sabha*, 19-9-1955, *vide Debates, Vol. X, No.* 24, *Cols.* 3469-70).

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2.28. The prohibitions prescribed in the new Companies Act served a useful purpose in preventing good people from becoming bad. It was possible that in the absence of prohibitions and restrictions, good people might turn bad. The corrective influence of a law was pointed out by *Shri C. C. Shah* in the following words:

> It is probably a truism to say that you cannot make man moral by legislation. And yet, it is also true that if law

cannot make bad people good; it does certainly prevent good people from becoming bad and it also prevents bad people from making good people bad. It has its own value, and it has its own preventive effect. It is true that most people do not want to infringe the law if there is a law; at least they would hesitate to infringe the law. But if there is no law and there is no voluntary code of conduct which guides them, they would take the fullest advantage of the situation, howsoever immoral it may be. Therefore, the prohibitions which are being inflicted by law have a useful purpose to serve; I expect that they will serve a useful purpose. I am satisfied that by and large the provisions which we have made in this Bill are necessary and inevitable under the present circumstances of our country.

(*Lok Sabha*, 13-8-1955, *vide Debates, Vol. V, No.* 15, *Col.* 10123-124).

* * *

2·29. **Restrictions in the Law: Provisions of law are to check frailties of men in business and doings of 'Benamidars'.**

The corporate world comprises men "who are extraordinary in their talents as well as in the mode of life which they have adopted". There are ubiquitous benamidars, "who try to do prohibited thing in the name of somebody else". The Government spokesmen in Parliament pointed out that the provisions of the new law were directed to curb the activities of those people; they were not based on suspicions of any sort. The Ministers cautioned the House that the incidence of malpractices was large enough to shake the confidence of the people in persons handling company affairs. *Shri Deshmukh* referred to these matters in the following words:

Shri Trivedi has talked of the conception of honesty of the ordinary man. Well, my only answer is: we are not dealing here with ordinary men. They are men who are extraordinary in their talents as well as in the mode of life which they have adopted, and in many cases we have proof of a very large incidence of malpractices in this particular respect. And therefore it is not right that we should turn a blind eye to them and have a pitiful kind of faith in the honesty of the ordinary man. As another speaker said, what we are dealing with here is the ubiquitous *benamidar*. Whenever you prohibit anything, then there are smart people who try to do that prohibited thing in the name of somebody else. We meet the *benamidar* almost everywhere, and we certainly meet him in the business world, and it is against him that all this widening net work is cast.

We feel there is likely to be a conflict of loyalties. I would go to some length in agreeing with Shri Trivedi that we should not suspect the honesty of the common man including all men in business, but we should certainly recognise the frailty of human nature. The frailty that

led orginally to nepotism also shows itself in other directions, and one is apt to judge somewhat indulgently one's own relatives. There is a saying in Marathi which means: 'This is my golden darling, and that is somebody's brat'. And it is this extreme faith in one's golden darling that we are trying to protect companies from.

(*Lok Sabha*, 24-8-1955, *vide Debates*, Vol. VI, No. 23, Cols. 11120-121).

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2.30. The reasons as to why the Government's hands were forced to effect a thorough overhaul of the entire system of control over company management through incorporation of a series of restrictive provisions in the new law, were explained by Shri C. C. Shah with a citation from the evidence given by an experienced Registrar of Companies before the Company Law Committee. *Shri C. C. Shah* said:

> I cannot do better than quote a person who was more authorised to speak about company management in this country than anybody else, who was the Registrar of Companies in Bombay for thirty years—a city which is the largest industrial city in India. After thirty years of experience of company management in this country this is what he has to say in general.
>
> 'I fully realise that some of my suggestions may at first sight appear to be far too drastic and perhaps even appear to be prejudiced. The truth is that ever since 1919, I have had to come into very close contact with thousands of companies. By the word 'companies' I do not refer only to those few larger companies in which better class, educated people invest. I refer to the thousands of petty mushroom companies which live like parasites and thrive upon the ignorance and credulity of the poor helpless toiling masses, and as a result of my thirty years' experience, I am constrained to state that the privileges conferred by the Indian Companies Act have been so cruelly abused that many people who have thus been ruined even feel that by allowing such fraudulent companies to prey upon the public the state has failed in its duty to the public. Nothing short of a thorough overhauling of the entire system of control over the companies in India will help to restore the public faith in joint stock enterprise in India.'

It is as a result of this state of affairs that we have this Bill. It seeks to effect a thorough overhaul of the entire system of control over company management. The state of affairs that is disclosed is this. Hundreds of thousands of people have lost their monies in joint stock enterprise. Those people in charge of company management, instead of making the fullest disclosures either in the prospectus or balance-sheets or accounts or records have perfected the art of disclosing as little as possible and concealing as much as possible.

(*Lok Sabha*, 13-8-1955, *vide Debates, Vol. V, No.* 15, *Col.* 10120-121).

2·31. Restrictions in the Act: Powers for relaxing them conferred on the Government.

The policy of the Government was to put in stringent restrictions in the Act and leave room for relaxation by the executive. As a result of this policy, the number of powers conferred on Government had considerably gone up. This was pointed out by *Shri Deshmukh* in the Rajya Sabha:

> The two alternatives open to Government were either to put more liberal provisions and give freedom to everybody or to put stringent restrictions and at the same time allow for more liberal treatment in cases where certain difficulties were experienced. Now the course we have taken is this. We have put stringent restrictions but left room for executive relaxation, and we think that that is a better method than leaving the rein loose, so to speak, for all concerned. That is why the number of powers has gone up, as for instance in the case of inter-company investments where the group under the same managing agent is concerned.

(*Rajya Sabha*, 22-9-1955, *vide Debates, Vol. X, No.* 27, *Cols.* 4062-63).

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2·32. Restrictions in the Act: Laying of rules or criteria for relaxation not possible.

On the general question of relaxation of restrictions in suitable and hard cases, a demand was made in Parliament that some principles or criteria should also be laid down on which Government might Act. *Shri Deshmukh* told the House that it would be possible to do so only after a body of case laws had been built up. This view was expressed by him in the following words :

> Then certain Hon. Members have said that we ought to lay down the principles on which we are going to act. Now, that is very difficult because all we have been told of is hard cases. Unless we examine those hard cases on merits and give our decisions, it will not be possible for us to deduce any principles. It is only after we build up a body of case laws that we shall be able to say that this exemption will be given in certain companies, in certain interests, or certain national interests, as for instance, new companies which are coming to start new industries here, or existing companies which have otherwise served the country well, or whatever it may be; it will be only then that we shall be able to deduce a body of principles. And I cannot see any way out of trusting Government in so far as the administration of the company law is concerned.

(*Lok Sabha*, 31-8-1955, *vide Debates, Vol. VI, No.* 27, *Col.* 11700-701).

2·33. ***Restrictions in the Act not discriminatory against managing agents.***

The scheme of the new law envisaged curbs on the directors, managing directors, managers and managing agents alike. Only a few special curbs had been put on the managing agents and these too were the old ones prescribed by the Act of 1951. As such, it was not quite correct to say that a discriminatory attitude had been adopted towards the managing agents, *Shri Deshmukh* explained this aspect of the new law as below :

> I come to general curbs. These are not directed against managing agents particularly. There are a large number of prohibitions and so on which apply to everyone—boards of directors, managers, managing agents, those who bring out the prospectus and so on and so forth. There are only a few special curbs, which are put principally on the managing agents; they also include managing directors and managers; they were introduced in 1951. All that the Joint Committee has done is to realise that these curbs will be required not only for the three years but permanently.

(*Lok Sabha*, 19-8-1955, *vide Debates*, *Vol. VI*, *No.* 19, *Cols.* 10515-16).

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2·34. **Restrictions in the Act: No, undue restriction placed on 'freedom of legitimate business'.**

The balance between the private and social interests, which the provisions of the new law are to secure and establish and the control of 'unsocial elements in business management without unduly restricting the 'freedom of enterprise of legitimate business', were emphasized by *Shri Deshmukh* in the following words.

> I do not claim that the Bill as a whole, much less some of its provisions, will not bear further scrutiny and examination. Indeed, as I have said more than once, I am looking forward to the Select Committee in due course to help us with its guidance and, after hearing all interests concerned if they deem fit, to indicate to us specifically how best we can achieve a better balance between the private and the social interests. Since the issue of practical policy is to determine how the unsocial elements in business management can be controlled without unduly restricting the freedom of legitimate business. I venture to think that it will be possible for all of us to get together regardless of our ideologies and to make a worthwhile contribution to achieve the limited object before us.

> The Bill is the first comprehensive attempt, after prolonged investigation and deliberation, at a basic reorganisation of the private sector of our economy. Too often in the past we have complained in the Legislature and outside it of anti-social activities in the private sector. Critics have not been slow to point out how its present disorganised state makes it difficult for it to fulfil its assigned role in the economic development of the country. Now that this comprehensive effort to reorganise the private sector has been made, it is up to all of us in this House to assist in the fulfilment of this effort.

(*Lok Sabha*, 28-4-1954, *vide Debates, Vol. IV, No.* 55, *Cols.* 5971-72).

* * *

2·35. The various restrictions and obligations imposed on company management in the provisions of the new law raised apprehensions in the minds of the business community that the new Act was a measure full of fetters and chains, which might make it rather too hard for private entrepreneurs to carry on their legitimate business. Dispelling these fears *Shri Deshmukh* said that the new Act merely created certain hedges and not fetters for the business. He spoke of this very briefly in the following telling words.

> Sententiously, the overall objective should be defined as one of growing hedges rather than finding fetters for private enterprise.

(*Lok Sabha*, 10-8-1954, *vide Debates, Vol. V, No.* 13, *Col.* 9800).

* * *

2·36. Further, speaking of the powers which appeared to be far too many and caused certain amount of disquietening feeling in the business circles who thought them to be a source of hindrance and obstruction to the business, *Shri Deshmukh* struck the following firm and assuring note in the Rajya Sabha :

> I am confident that the powers which we have taken will prove to be a help and not a hindrance to legitimate business as we intend, as I said to exercise them with discrimination and despatch.

(*Rajya Sabha*, 19-9-1955, *vide Debates, Vol. X, No.* 24, *Col.* 3470).

* * *

2.37. *Shri Deshmukh's* assertion that the new Companies Act aimed at encouraging legitimate business and at directing the activities of joint stock companies on healthy lines and not at putting fetters around honest and genuine business, was also supported by *Shri C. C. Shah*, who took a leading part in the discussions on the Companies Bill in the Joint Committee and Lok Sabha. *Shri Shah* observed :

> After all, the aim of company law is not to put all people in strait jacket; the aim of company law is really speaking

to encourage to promote industrial development, to promote industrial production, to have healthy joint stock enterprises and to promote the interests of shareholders and the general public. The aim of company law is not *to oppress the management*, but at the same time, it can not help making those provisions, if it becomes inevitable. Therefore, I submit that these provisions have become necessary by reason of the peculiar circumstances which exist in our country today and more so by reason of that peculiar system which exist amongst us, namely, managing agency.

(*Lok Sabha*, 13-8-1955, *vide Debates, Vol. V, No.* 15, *Col.* 10124).

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2·38. **Restrictions in the Law: Relaxation to be made in *bonafide* case.**

The powers conferred upon Government under the provisions of the new Act were for the furtherance of business and not for hindering it. There was scope for relaxation in suitable and *bonafide* cases. These aspects of the new Act were indicated by *Shri Deshmukh* in the following words :

The assemblage of powers vested in Government by this Bill is enormous and has probably no parallel elsewhere. I should like to point out here that some of these powers are intended to help and not to hinder; that is to say, we have sought to provide for a certain executive relaxation in suitable and appropriate cases where the general rule itself is somewhat rigorous. Take the matter of interlocking or the matter of clause 197, the overall limit for remuneration and so on. We have fixed rather a high hedge but have taken the power to let out a few cases in appropriate circumstances.

(*Lok Sabha*, 12-9-1955, *Vol. VII, No.* 37, *Col.* 13276-277).

* * *

2·39. In the Rajya Sabha, the late *Shri M. C. Shah* drew attention of the Members of that House to the observations contained in the Report of the Company Law Committee that the Committee "have taken all possible care to see that our recommendations do not impose any unreasonable burden on legitimate business". Approvingly *Shri Shah* quoted from the Report as below :

In order to appreciate the bearing of the major changes introduced in the Bill, one has got to study very closely its detailed provisions and to evaluate the proposals contained in them in the light of the experience of the working of joint stock companies in the past, and the potentialities of this form of organisation for the future. Throughout its report, the members of the Company Law Committee took great pains to emphasize these two aspects of its recommendations. If the Hon. Members will bear with me for a few moments, I shall quote the Committee's concluding words. "Our proposals", the

Committee observed, "attempt to secure the fullest practical measure of disclosure of information relating to the activities of companies, and the imposition of such restrictions on these activities as we have considered necessary in the present state of company practice in this country. Some of these restrictions will, no doubt, appear irksome to business which is conducted in an efficient and honest manner but reforms in all fields of group activity must necessarily be based on average behaviour. It is part of the social discipline of our times that institutions no less than individuals, which are in advance of the average standard, have to submit themselves as much to the rigours of the law as those that are below that standard. Nevertheless, we have taken all possible care to see that our recommendations do not impose any unreasonable burden on legitimate business. In arriving at our recommendations we have constantly borne in mind the twin objects underlying them, *viz.*, the need for eliminating abuses and harmful practices on the one hand and for providing sufficient flexibility in the law on the other hand". It is in the light of these general principles that I would now invite the Hon. Members to consider the proposals contained in the Companies Bill.

(*Rajya Sabha*, 12-5-1954, *vide Debates, Vol. VI, No.* 45, *Col.* 6209).

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2·40. Powers for the Central Government under the Act: Their nature and range.

On the nature and range of the powers conferred on the Government under the Companies Act, *Shri Deshmukh's* following observations are significant. In brief, he mentioned that under about 94 sections of the Act the Central Government would have the privilege of exercising powers of some sort. These powers could be classified under four categories. He said:

The next question is about Government powers because they have a bearing on the character of the administration which was the other matter in which Hon. Members were particularly interested. There are about 94 sections under which the Central Government has to exercise powers. We have divided them into 4 categories. There is one—many of them are old ones—section the powers of which are important in the sense that they cannot be delegated, like power to empower District Courts to exercise jurisdiction, power to exempt a company from the operation of Schedule VI—I am only giving some illustrations then there is power to appoint inspectors on application and various other sections about inspection. Then there is power to declare that the management of a company is accustomed to act in accordance with the instructions of the managing agent of another company. This is a section the interpretation of which is very difficult and

that comes in connection with investing and interlocking of funds. Then there is also power to appoint an official liquidator. These are a kind of law and order powers and I suggest that these cannot possibly be handed over or delegated to an advisory commission or a statutory commission. Then there are other powers which may be delegated to the executive head to the extent to which they may be delegated; it makes no difference whether there is a statutory commission at the Centre or whether there is a Central Department.

In the first category there are 21 sections and those, I think everyone will agree, ought to be exercised by the Government.

In the second category there are 34 sections in which the powers can be delegated like the power to declare that an establishment shall not be treated as a branch office. It is not a very important power; we can allow a Registrar generally, if there is one, to declare that. Then there is power to appoint auditors—may be, that is a power which ought to be exercised by the Government. Power to remove disqualification of managers is again an important power and to a certain extent it may be delegated. Then there are powers to prevent destruction of books, right to receive fees paid to registrars, so on and so forth.

In the third category there are important sections where there are powers to alter schedules. Obviously the House will not like these powers to be exercised by a statutory commission. In this is also included the power to make rules. Then there is immunity for action taken in good faith; this is essentially a sovereign power and cannot be transferred to a statutory commission. There is also power to appoint Registrars. These are 21 powers and they, I suggest, must only be exercised by the Central Government.

That leaves certain powers which mostly, we have already been exercising under the amended Act of 1951. The House will remember that in 1951 we took various powers in regard to approval or changes in the position of managing agents, to file a suit against a company on the application of a minority in a case of alleged oppression and so on. These are about 18 powers. They include approval to appointment of managing director. They also include powers to notify an industry. I cannot imagine any government handing over the power to notify an industry to a statutory commission. There are other powers also like this.

(*Lok Sabha*, 19-8-1955, *vide Debates, Vol. VI, No.* 19, *Cols.* 10523-525).

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2·41. Regulation of Affairs of Companies: Powers given to the Government.

In further justification of the powers conferred on Government and of the detailed regulation of the affairs of the companies, *Shri Deshmukh* spoke as follows in the Rajya Sabha:

> Much has been said in the Lok Sabha as well as elsewhere, about the enormous powers conferred on the Central Government by this Bill. I do not know if all Hon. Members fully realise the logical dilemma implicit in our basic attitude towards this difficult problem of company law reform. If we could have left private joint stock enterprise alone as it has been left more or less hitherto obviously all that was needed was to fill in the lacunae in the existing Act and to strengthen the administration to enable to carry on its limited duties a little better or perhaps very much better than it had hitherto done. But the compulsion of our accepted social objectives and economic policies renders this simple solution impossible. If the lessons of the past of other countries are of any use our economy seems to be destined for an increasingly large measure of regulation and control in the social interest. The complexities of modern business inevitably determine the character of such regulation. It must either be detailed or it must remain ineffective. Basically this is the justification for the large measure of discretionary authority which has been vested in Government by this Bill. In other words, the powers which the Central Government are taking would seem to be largely a reflection of the scheme of regulation of the private sector envisaged in the Bill. I am confident that the powers which we have taken will prove to be a help and not a hindrance to legitimate business as we intend, as I said to exercise them with discrimination and despatch.

(*Rajya Sabha*, 19-9-1955, *The Debates*, *Vol. X*, *No.* 24, *Cols.* 3469-70).

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2·42. With regard to the detailed regulations and restrictions imposed on company managements against which fears and protests had been made by the representatives of the business world in and outside Parliament, *Shri C. C. Shah* made a few important points which lent support to the Government views expressed by *Shri Deshmukh* in the two Houses of Parliament on different occasions of the discussion of the Companies Bill. Firstly, *Shri C. C. Shah* said that 'this regulatory piece' could succeed only if the co-operation of those whom it concerns was forthcoming and if the spirit underlying the provisions of the new measure was observed. Secondly, he said, that a regulatory piece like this was both irksome to those whom it concerned and to those who administered it. *Shri Shah* spoke as follows :

The Companies Bill after all is a regulatory piece of legislation and in a regulatory piece of legislation it *i.e.* Government *can succeed only if there is voluntary* cooperation of those *whom it seeks to regulate* to a very large extent. Take for example, the various profession—the lawyers, auditors, engineers and the medical profession. They have a code of ethics or at least they have a code of conduct and those who do not observe them are taken to task by their respective councils. Have we found in this country any chamber of commerce taking any steps against those who have violated the provisions of law? Have those in charge of company management voluntarily taken steps to check those things? If they have not done so, is it legitimate to complain that too much regulation is coming upon them?

After all, every regulatory piece of legislation is irksome. It is irksome to those for whom it is meant and for those who have to administer it. It is none too much of a pleasure to Government to undertake such a heavy responsibility and burden. And yet, if the state of affairs is such that regulation becomes inevitable, we cannot shirk our duty.

There is another difficulty about all regulatory pieces of legislation. When you make a regulatory piece of legislation, those who are concerned with it feel that all the duty which they have is to observe the law in its letter and that there is no obligation upon them to observe the law in its spirit. They violate the spirit of it and they feel that if they can keep within the four corners of the law, there is no other code of ethics which can guide them. No regulation howsoever long and large can ever regulate or provide for every contingency. I do expect and I do appeal that those who are in management will look to the spirit of this law and will cooperate with those in authority to observe the spirit of it and not make it difficult or necessary for them to make it more and more stringent.

(*Lok Sabha*, 13-8-1955, *vide Debates*, *Vol. V*, *No.* 15, *Col.* 10122-123).

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2·43. An important reason for conferring a large number of powers on Government was the lack of proper vigilance and ineffectiveness of the shareholders as regards the working of the companies and company managements. On this point *Shri C. C. Shah* spoke as follows :

It is true that when we have given these powers, if we fail in achieving the objective which we have set before ourselves, no small part of the blame will lie at the door of the Government and therefore, it is a truism to say that the Government undertakes a very great responsibility in having agreed to take these powers.

Those powers had to be given because the shareholders are unable to exercise the amount of control which they should. Theoretically it may be right to say that if the shareholders are vigilant and wide awake it is unnecessary for the Government to interfere in the matter. But it is not only in India but also in other countries of the world, in England also, the shareholders are unable to do that.

(*Lok Sabha*, 10-9-1955, *vide Debates, Vol. VII, No. 36, Cols.* 13178-179).

SECTION FOUR

PROVISIONS CONCERNING DIRECTORS AND BOARD OF DIRECTORS.

2·44. Directors: Restrictions on their powers.

On the question of placing restrictions on the powers of the directors, *Shri Deshmukh* said as follows in the Rajya Sabha.

> So far as the company's powers are concerned, they are what they will be, according to the Articles of Association or the Memorandum. There is no restriction on them and therefore, we are only concerned with what the directors' powers should be. So far, there have been no restrictions on directors' powers. The powers of directors were co-extensive with the powers of the company, but what we are doing today is, for the first time, to put a restriction on the powers of directors, not for the transaction of business, not with any measure connected with the welfare of employees and so on. Where it is a matter not directly connected with the conduct of affairs of the company, then, we say to the directors, "You shall be restricted to this, but if you want to go beyond this, you have to go before a general meeting". At present, the directors exercise unlimited powers. They do what they want to do and then that matter goes before the annual general meeting for approval and there, it is always open to a shareholder to pick out any of their actions and raise an issue. I am quite sure that with the more stringent rules and regulations and the provisions that we shall have in this new enactment, the shareholders will be enabled to be far more critical of what the directors are doing in this matter.

(*Rajya Sabha*, 26-9-1955, *vide Debates. Vol. X, No.* 30, *Cols.* 4706-07).

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2·45. The object of placing restrictions on the powers of the directors was the same as in the case of managing agents, *viz.*, to check abuses in company management. Government's policy was to tackle these abuses and malpractices irrespective of "whether they occur in one type of company or another." This being so, there was no question of curtailing facilities or inducements to companies to develop alternative forms of management through directors stepping

into the shoes of managing agents. *Shri Deshmukh* made the position amply clear in the following words :

> I should, however, like to clarify one issue of general policy which has been raised from time to time. It has been suggested in some quarters that in view of the general attitude which the Joint Committee has adopted towards the managing agency system, it was up to the committee to offer suitable facilities or inducements to companies to develop alternative forms of management through directors. Instead, they complain that the Joint Committee has imposed some further needless restrictions on directors. Now, it is not clear to me what the sponsors of this view have in mind. It is possible to conceive of facilities or other inducements to companies managed by directors which may be denied to companies managed by managing agencies, although in my opinion, such a course would be very inadvisable. But, it is not easy to see what differential provisions could be made in the Companies Bill in favour of directors. The restrictions which have been imposed on directors are the same as those imposed on managing agencies and are intended for the same purpose in either case. While it must be the desire of all of us to give reasonable facilities and encouragement to companies run by honest directors, we cannot obviously in the light of our past experience overlook the fact that abuses in company management which we seek to prevent have occurred not only in companies managed by managing agents, but also in companies managed by directors. The Government's general policy has, therefore, been to impose such restrictions as they consider necessary to prevent the abuses and malpractices, irrespective of whether they occur in one type of company or another. If, consistent with this basic policy, it is possible to provide suitable facilities or encouragement for this form of company management or any other, then certainly we are all bound to entertain constructive suggestions in this behalf.

(*Lok Sabha*, 10-8-1955. *vide Debates, Vol. V, No.* 13, *Cols.* 9810-9811).

* * *

2·46. The provisions of the new Act under which the number of company directorships which a person or individual could hold are restricted, were characterised as rather severe by certain sections of public opinion in and outside Parliament. *Shri Deshmukh* drew the attention of these critics to the exemptions provided for in the Act in determining this number and to the stricter restrictions existing in some foreign countries *e.g.* the U.S.A.

Shri Deshmukh said :

> "As regards the number of directorships—that is clause 253—this excludes directorships of various kinds. For

instance, private companies which are not subsidiaries of public companies, directorships of unlimited companies, associations not for profit and companies in which such a person is only an alternate director, that is to say, a director who is only qualified to act as such during the absence of incapacity of some other directors.

Now, I may mention that the number twenty is much in excess of the average number of directorships held by a person in U.S.A or U.K. As the Company Law Committee has pointed out, some continental countries have statutorily restricted the number to a lower figure. And, anyway, the matter is before the Select Committee. If they do not like twenty, they may suggest some other figure, and indeed, they might hold the view that if there are only a few people or bodies, so to speak, who are capable of making a contribution although they hold a large number of directorships, some way might be found by which their contribution could be secured.

(*Lok Sabha*, 3-5-1954, *vide Debates, Vol. IV, No.* 59, *Col.* 6405).

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2·47. The provisions of the new law were designed to secure and place "an independent, honest and efficient" board of directors at the helm of the affairs of a company. How the scheme of the new law secured this objective was brought out by *Shri C. C. Shah* in his following speech:

The key to the reform of company is really to reform the directorate, and if we can succeed in reforming the Board of Directors and providing an independent board, we have done almost all that a company law will require. The difficulty is how to provide for it.

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The peculiar characteristic of corporate enterprise is that it divorces ownership of property from its control and management. It is the peculiar characteristic of corporate enterprise or of corporate companies that whereas ownership rests with a large group of people diffused all over the country, the control and management goes to a small group of people who dominate the company. Now, what we really wish is, because the scattered shareholders cannot manage the company, that that small group must be really representative and must be of the choice of those shareholders and not of a dominant minority. Really speaking, the problem is not so much to protect the minority of shareholders but the problem is to protect the majority of shareholders against the dominant minority, the group which holds a block of shares, say 20 or 15 or 30 per cent. It is that dominant minority group which dominates over the majority. This divorce between ownership and control of property goes on increasing as the field of corporate enterprise

becomes wider, and the result is that the shareholder instead of remaining the owner of the property becomes a mere recipient of dividend like a bond or a debenture holder. Our effort is to restore to the shareholder the position to which he is by right entitled.

Now, what have we done in order to do this? In the Act of 1936 for the first time we provided that the managing agent cannot appoint on the board more than one-third of the directors, but as the Bhabha Committee has rightly pointed out, our experience shows that they not only nominate by right the one-third but even the remaining two-thirds become their nominees. Therefore, in this Bill we are introducing for the first time clause 260 by which it is provided that certain persons closely associated with managing agents shall not be elected on the Board of Directors unless special notice of election is given and a special resolution is passed by the shareholders. The intention is to draw the attention of the shareholders that the particular persons standing for election to the Board are persons closely associated with the managing agents. If they want to elect them they are free to do so provided they get three-fourth of the majority. That is one device which we have adopted in this Bill to see that in the remaining two-third field at least no nominee of the managing agents comes in.

The second remedy which we have provided in clause 377, and we have said that where that one-third comes to more than two directors, the managing agents shall not be able to appoint more than two directors, so that the maximum number of directors which they can appoint is only two, and if the whole board consists of not more than five directors, only one.

The third remedy is clause 407 where we have given power to the Government to appoint two directors on the board on the application of one-tenth of the shareholders and I hope there will be an amendment to that clause permitting 100 shareholders to apply if it is less than one-tenth.

These three things which we have provided in this Bill will, I hope, go some way in at least securing an independent board.

(*Lok Sabha*, 2-9-1955, *vide Debates, Vol. VI, No.* 29, *Cols.* 11926—928).

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2·48. Directorships: Limiting the number vis-a-vis size of companies

On relating the number of directorships that a person can be permitted to hold, to the size of the company *Shri Deshmukh* said that though it might look plausible reasoning theoretically, it could

often be misleading. In fact there were certain other important considerations too which could not just be ignored. On this subject *Shri Deshmukh* said the following :

> We really have no logical case for saying that twenty by itself determines everything. Twenty companies may be very small companies with a total capital of Rs. 50,00,000 and three companies may themselves absorb Rs. 30 crores. There are men who are directors of a company with Rs. 30 crores—like the Sindri one, a Government company. Whether you add another nine or ten companies to it and make up another Rs. 1,00,00,000, it does not really seem to me to make very much difference. Nevertheless in such matters it is good to give an intention of one's ideas, that is to say, a token of what one would like to see, and if that by itself does not prove to be a corrective to people amassing directorships, why should one proceed to the next stage of elaboration? Therefore, I said theoretically it may that there is a plausible case for limitation of directorships on the size of the company or the share capital, but that basis is likely to be misleading. Moreover, the time and effort needed to look after the affairs of small companies may even be the same as the time and attention such a director might have to bestow on big companies. For instance, the work involved for a director in the case of a new company will be much greater than in the case of a going concern. The director's responsibility will vary with the number of other directors on the board and of the quality of the other colleagues on the board. It is not possible, we feel, to enter into the refinements in the statute and there does not seem to be any virtue for us to fix the number of directorships. It only hinges on the share capital of the company and that by itself is not a complete solution.

(*Lok Sabha*, 2-9-1955, *vide Debates, Vol. VI, No. 29, Cols.* 11947-948).

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2·49. Then there were other suggestions which I have no doubt, I shall have to deal with when we come to the clauses as for instance, that the number of directorships should be related to size of the block capital. That point was raised in the Lok Sabha also, and the only danger is that it might put a sort of limit, which might be undesirable, in the present context, on the expansion of companies, an expansion which might be justified otherwise by the economics of production. Moreover, the nature of companies varies enormously from industry to industry and if a fairly high ceiling is proposed—which may defeat its own purpose—on the total paid up capital, then we feel that company formation might be impeded. Therefore here as in many other

matters I would say that it is best to have two bites at the cherry instead of trying to swallow it whole.

(*Rajya Sabha*, 22-9-1955, *vide Debates, Vol. X, No. 27, Col.* 4064-65).

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2·50. The criterion of size to which the then Finance Minister had referred in his speeches in Lok Sabha, was suggested by *Shri Sadhan Gupta* who spoke as follows on this issue :

The second important principle which I suggest is the question of limitation of directorships by number as well as by size. We have sought to provide in this Bill that a director can be a director of twenty companies. I do not see how a director can possibly efficiently manage twenty companies. If you accept the position that a director may be allowed to earn remuneration out of twenty companies without doing anything at all that is understandable. But if we accept the position that a director should be in a position to render real service to every company in which he is a director, then I do not see how a human being can serve twenty companies. There is no getting away from the fact that beyond a number, directorships as respects companies which are beyond a number which a director can manage must be in the nature of sinecures and there is no doubt if a man is allowed to be a director of twenty companies, about 15 of them will be sinecures. If we want efficiency, I think five or at most ten companies is sufficient and we have submitted a number of amendments to that effect, for limiting the number to five or ten. But more important still is that you should not have your eye only on the number of companies that a person directs; you must also look to the size of the companies. A person may be a director of twenty small companies. That is not very dangerous as regards that aspect of concentration of wealth. We have to consider the question of efficiency as well as the question of concentration of economic power and concentration of wealth. Now by managing twenty small companies a director may suffer inefficiency, but it is not dangerous as respects the aspect of concentration of economic power or concentration of wealth. But the danger comes in his being allowed to manage even three or four big companies. Therefore, the scheme we have suggested is that director should manage five or ten companies at most provided as stated in our amendment No. 775, if a person holds office at same time as director of more than one company, the number of companies shall be such that the block capital of all such companies shall not in the aggregate exceed Rs. 10 crores. Our scheme is that if one is a director of one company, the company may be as big as can make it. We have up to now no scheme in hand to regulate the size of one particular company. Of course, there are dangers in it.

> One company may, in the name of expansion, extend into other ventures. That will have to be watched and if that kind of tendency becomes alarming it must be checked. But subject to that in a legitimate field of expansion one company may extend to a big size; it may extend even beyond Rs. 10 crore and there is no harm in directing that particular company. But when you have a multiplicity of companies you must limit the size of block capital, because block capital is the surest index of the size of the company, the surest index of how much economic power, how much wealth it can give to its directors. Therefore, we propose this scheme; instead of limiting by numbers alone we must try to limit by number-*cum*-size of the undertakings.
>
> Therefore, our scheme would be that a director would be enabled to be a director of five or ten companies at most but if any of these companies has a block capital of more than Rs. 10 crores, then he can manage only one company, or more than one company which is within the block capital of Rs. 10 crores. He cannot manage the excess, even if it is less than five. That is the scheme we propose and which we commend to this House for acceptance.

(*Lok Sabha*, 1-9-1955, *vide Debates, Vol. VI, No. 28, Cols.* 11836-11838).

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2·51. Interlocking Directorates: Control thereof.

On the important question of inter-locking directorates and the evils following from it, *Shri Deshmukh* stated that the provisions of the law "should go far to reduce their incidence". He further suggested that the new Department of Company Law Administration would also watch the relationship of joint stock companies with the banks and insurance companies and would suggest necessary remedial measures to check the demonstrable evils". *Shri Deshmukh* said as follows:

> The provisions of the Bill, we felt, relating to associates of managing agents should go far to reduce the incidence of such interlocking directorates and the restrictions imposed on the powers of directors will in our view further reduce the evils arising from such interlocking.
>
> The problem of concentration of economic power which results from interlocking directorates as between joint stock companies and banks and insurance companies has to be tackled administratively and it seems to us that no amount of legislation will be able to remove this evil because of the widespread practice of appointing nominees as directors. We feel that now that the new department for the administration of company law has been created it will be possible for this department to watch the activities of companies closely and the interconnections with banks and insurance companies

through their common directorates and to suggest remedial action against demonstrable evils in consultation with the Reserve Bank of India and the Department of Insurance.

(*Lok Sabha*, 2-9-1955, *vide Debates, Vol. VI, No.* 29, *Col.* 11949).

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2·52. Board of Directors: Nominees managing agents thereon.

The rationale behind giving managing agents the right to nominate directors on the board of directors, was explained by *Shri Deshmukh* in the Lok Sabha. The number of such nominee directors was to be limited so that the independence of the board was not marred. *Shri Deshmukh* spoke on this as follows:

> And secondly, 'since I have a little stake in the company, I would like, by agreement to have a right to nominate a couple of people to the Board of Directors'. Now, I cannot see anything unnatural in an arrangement of this kind. That is the kind of arrangement which we think of when we give loans to companies. And, indeed the House insists that when we give a loan to a company we should insist that government directors are nominated there. Now, what is sauce for the goose must be sauce for the gander also. It is nothing more. There is absolutely nothing more that the managing agents get. They get only the right to manage and they get a right to nominate. There were other things which were excrescences. It is not part of my case to say that there were no abuses and that there were no excrescences. There were abuses and we yet want to extract the best out of people who are or who would be prepared to place their experience at our disposal.

(*Lok Sabha*, 19-8-1955, *vide Debates, Vol. VI, No.* 19, *Cols.* 10511-512).

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2·53. Commenting upon the composition of the board of directors and the control of the managing agents over it, *Shri R. R. Morarka* said that the most of the abuses arose where a board of directors was weak and composed of managing agents' nominees. Such a board had no independent character and instead of guiding and supervising the work of the managing agents, it was guided and supervised by the latter. *Shri Morarka* spoke as follows:

> The Joint Committee realised that the composition of the Board of Directors is by far the most important aspect of the company law. The managing agents also work only under the supervision and control of the Board of Directors. If there is a strong Board of Directors in a company, the chances of malpractices and the chances of arbitrary rule by the managing agents are comparatively less. It is only in those companies where the Board of Directors is weak, or where the

managing agents have full control over the Board of Directors, that most of the defects arise. It has, therefore, been laid down in the Bill that a managing agent cannot have more than two directors on the Board, and if the Board of Directors consists only of five directors he cannot have more than one director. More important than this is the provision that if any of the associates or relatives of managing agent is to be elected to the Board of Directors, he would require 75% majority as against 51% which would be required for any other person. This provision will provide ample safeguards for the rights of the shareholder and will ensure better management.

(*Lok Sabha*, 13-8-1955, *vide Debates*, *Vol. V, No.* 15, *Cols.* 10085-10086).

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2·54. Board of Directors: Representation of minority thereon.

The representation of minority interests on the board of directors of the company would lead to conflict and would not be conducive to its work. This was pointed out by *Shri Deshmukh* in the following words :

"There was a suggestion by one Hon. Member that minority shareholders should be represented on the Board of Directors. That was a point which was considered and rejected. This is bound to lead to conflicts in the Board itself and would not be conducive to team work which is essential for the success of every business. I doubt whether that will prove acceptance as a practicable proposition to the Select Committee."

(*Lok Sabha*, 3-5-1954, *vide Debates*, *Vol. IV, No.* 59, *Col.* 6410).

* * *

2·55. Similarly, he pointed out that the suggestion that there should be Government nominated directors on the board of directors would be an impracticable proposition. *Shri Deshmukh* said :

Suggestions were made about safeguards in the constitution of the Board of Directors to ensure the interests of the minority shareholders. The proposal was that a percentage of the directors should be appointed by Government. I am inclined to think that this would be very undesirable, because while Government will be liable to criticism for the acts of directors, they will have no hold over their activities, and if it is intended that Government should appoint their own officers as directors of companies it will be impracticable, having regard to the personnel at our disposal to do so on any appreciable scale.

(*Lok Sabha*, 3-5-1954, *vide Debates*, *Vol. IV, No.* 59, *Col.* 6410).

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2·56. Board of Directors: Proportional representation.

The new law contains a permissive provision, viz., Section 265 (clause 264 of the Bill) under which a company could lay down in its articles that not less than two-thirds of the total number of directors of a public company or its private subsidiary company could be elected on the basis of the principle of proportional representation. Through such elections minority interests could sit on the board of directors. This, however, would be a novel experiment in our country and it was therefore, advisable that a cautious start was made with it. *Shri Deshmukh* made this point in the following words :

> The new clause 264 inserted by the Joint Committee provides that it would be open to a company to lay down in its articles that no less than two-thirds of the total number of directors of a public company or a private company which is a subsidiary of a public company may be elected to its Board on the principle of proportional representation. Where a company chooses this particular form of election to its Board, this clause further provides that the appointment of directors may be made for a period of three years at a time. This is a permissive provision which does not in any way interfere with the rights of a company to decide on the best form of election of directors on its board. According to our information, a great majority of the federating States in the United States of America provide for this method of election to the boards of companies in their corporation laws. Whatever may be the advantages of this method of election,—and I submit that one cannot be dogmatic about this in the absence of experience in our own country—I do not see how the powers conferred on a company to regulate the method by which it can elect its members on its board can be described as an innovation alien to the structure of Joint Stock Companies. Indeed, some Hon. Members who were members of the Joint Committee are not content with this permissive provision and would like a statutory provision in this behalf. When they raise the issue, as I have no doubt they will, I shall have occasion to deal with that particular aspect of the argument. Briefly, one might say that it is not axiomatic that the accepted form of democracy which obtains in regard to our political institutions would be *prima facie* unsuitable also for the management of industrial enterprises.

(*Lok Sabha*, 18-8-1955, *vide Debates*, *Vol.* 7, *No.* 13, *Cols.* 9805-06).

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2·57. On another occasion *Shri Deshmukh* said the following in Lok Sabha on the question of proportional representation :

> Generally speaking, the studies made confirm that majority stockholders in the closely held corporation and the management and board of the widely owned corporations occupy an extremely strong position in relation to minority stockholders. That, I think is what one might

expect. No system of cumulative voting or proportional representation is going to turn a majority into a minority. All that it will do is, to prevent it from swamping every other form of opinion. It says that cumulative voting *has in practice led to a weakening of the position of the management or the majority to a great extent. This is* the report that we have received and, therefore, in theory I have not very much to say against it because it all depends on what the changes are.

I should like to point out—what I said in my intercession a little while ago—that what I fear is that instead of being a method by which the minorities which are only transient in their nature are represented, it might be a means by which small power groups will make sure that they get two or three directors on the boards of companies and there might emerge a kind of warfare among small power groups none of which is in a position to form a big majority. That danger also should not be ruled out.

(*Lok Sabha*, 2-9-1955, *vide Debates*, *Vol. VI, No.* 29, *Col.* 11956)

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2·58. The adoption of proportional representation for the composition of board of directors was strongly urged by *Shri Asoka Mehta.* He made the following observations :

As far as the voting rights are concerned, the Mover (The Finance Minister) has pointed out that proportional representation would be permissible; it need not be statutory. He also referred to the minute of dissent of two of our Members. I am in agreement with the two of our Members and I feel that the democracy of a company is basically different from political democracy. I was one of those who, though belonging to a minority party in the country and who knew that for a long time would have to be in the opposition favoured the type of voting that we have adopted in the country and I was opposed to proportional representation. But, here in companies, proportional representation would be useful because then alone would it be possible for minority shareholders to know what is happening in companies. Unless it is made obligatory and not left optional the minority groups of shareholders will never be able to collect the information that the Government require in order that a thorough scrutiny be made into the working of companies. It is only when one or two representatives of the minority shareholders sit on the board that they would be in a position to collect the information if necessary and where necessary and bring it to the attention of the authorities concerned.

(*Lok Sabha*, 10-8-1955, *vide Debates, Vol. V, No.* 13, *Col.* 9830).

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2·59. On another occasion *Shri Asoka Mehta* referred to this matter as follows :

> I would like to point out that it is necessary to have proportional representation because, in the modern world, those who are in charge of management are able to retain their control with only a small holding. It was because of this experience that proportional representation was accepted in the U.S.A. We are likely to have similar kind of difficulties here and therefore it would be better if we introduced proportional representation. It is not enough to make it permissive; it will have to be made obligatory.

(*Lok Sabha*, 1-9-1955, *vide Debates, Vol. VI, No. 28, Col.* 11843-44).

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2·60. Board of Directors: Workers' participation in management.

The workers' participation in management was among the few matters which figured very prominently in the discussions on the Companies Bill in the two Houses of Parliament. *Shri Deshmukh* suggested that the issue should be looked from the practical angle:

> We all generally in a vague way feel that something ought to be done but this is a matter in which one would have to be guided not only by the theories and principles but also the feasibility of the situation here.

(*Lok Sabha*, 19-8-1955, *vide Debates, Vol. VI, No. 9, Col.* 10530).

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2·61. Later on, in the course of the debate in the Lok Sabha, *Shri Deshmukh* also made it known that Government had an open mind in the matter. In the context of representation of various interests on the board of directors, *Shri Deshmukh* touched upon this subject in the following words:

> Prima facie, I should have thought—that is voicing a personal opinion—that if workers are to be associated with management, it does not profit them very much if they attend one annual general meeting, or two meetings in the year. It is very much better, it seems to me if it is accepted in principle, that they should be associated with the board of management. That falls in line with what is done in regard to other interests. Sometimes debenture holders are given representation; there may be a condition in their trust deeds that debenture holders may be represented on the board of management. It is usual also,—as I had occasion to say in the course of previous debates—that a person who lends money sometimes makes a condition that a nominee of his should be taken as a director. And certainly so far as direct Government loans to private enterprise are concerned, it is usual for Government to

stipulate that one or two Government directors should be appointed. Now, that illustrates the general principle that there are other parties interested besides the holders of the shares in the management of a company. For instance, Government represents the community. The community has a very lively interest in how the affairs of a company are managed. Now we are not carrying that far enough, or too far, in the sense of requiring that government directors should be appointed to every enterprise, because there are other means by which Government is able to control and regulate industry. There is the Industries (Development and Regulation) Act. But where Government has a specific financial interest or stake, then I say it is usual for Government to stipulate that there should be Government directors.

Now, it is a platitude to say that the employees also are interested in the good management of a company, because if it is badly managed and if it is suffering a series of losses, their whole occupation is in jeopardy and they have to take recourse to other means like appealing to Government to see that the particular concern is saved. Since prevention is better than cure, one could argue that it would be better if workers had some kind of say in the actual management of companies.

As I say all these issues are open. Government have not closed their mind to anything and they will be awaiting the advice of the Planning Commission. In the circumstances. I do not know if anything is to be gained by my going into the merits of the matter.

(*Lok Sabha*, 30-8-1955, *vide Debates, Vol. VI, No.* 26 *Cols.* 11530—532).

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2·62. Later, on *Shri Deshmukh* said the following in the Rajya Sagha on this question:

Now in regard to directors there is this question of the right of workers to participate. There seems to be almost universal agreement that there should be some form of participation. The difficulty is that we don't know which form will secure the results from everybody's point of view, from the workers' point of view, from the employers' point of view and from the consumers' point of view. As I said, this is a matter in which one has to revise one's notions from time to time. All the different schools of thought had opportunities of expressing their views before the Planning Commission.

(*Rajya Sabha*, 22-9-1955, *vide Debates, Vol. X No.* 27, *Col.* 4063).

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2·63. *Shri Sadhan Gupta* presented a detailed scheme for the participation of labour in the management of companies. He suggested that the workers should be given a right to attend company meetings and also to send their representatives on the board of directors. He moved certain amendments to Clauses 164 and 254 of the Bill, which contained the details of these proposals.

The amendment to clause 164 ran as follows:

"(1) The employees of the company who are workmen within the meaning of the Industrial Disputes Act, 1947 (XIV of 1947) shall be entitled to elect by secret ballot from among themselves a number of employees' delegates equal to one fourth of the total number of members of the company.

(2) The election referred to in sub-section (1) shall be held not later than one month prior to the date of statutory meeting or the annual general meeting as the case may be.

(3) The company shall afford all reasonable facilities to the employees to elect employees' delegates under this section.

(4) If any company contravenes the provisions of sub-section (3), such company shall be punishable with fine which may extend to five hundred rupees for each day on which the contravention is made or continues; and every officer who is in default shall be punishable with imprisonment which may extend to six months or with fine which may extend to one hundred rupees for each such day.

(5) The employees' delegates in the aggregate shall have a number of votes equal to one fourth of the total voting power computed by excluding the employees' delegates, and each employees' delegate shall be entitled to cast as many votes on a poll as would be determined by dividing the aggregate number of votes exercisable by employees' delegates by the number of the employees' delegates elected.

(6) Every employees' delegate shall be entitled to participate and vote—

(a) where he is elected before a statutory meeting, in every general meeting between the statutory meeting and the next annual general meeting; and

(b) where he is elected before an annual general meeting, in every general meeting held before the next annual general meeting.

(7) For the purpose of enabling the employees to elect the employees' delegates, the company shall, in consultation with the employees entitled to elect employees' delegates and in the prescribed manner prepare, not later than three months prior to the annual general meeting

in respect of which the election is to be held, an electoral roll containing the names and addresses of the employees entitled to elect employees' delegates and demarcate the constituencies for the purpose of the election.

(8) On the application of any employee entitled to elect an employees' delegate, any civil court exercising original jurisdiction in the place where such employee is employed may make such additions and alterations in the electoral roll as it may consider just and fair.

(9) On the application of any such employee, any civil court, exercising original jurisdiction in the place where the company has its registered office, may make such addition or alteration in the demarcation of constituencies as may appear to be just and fair.

(10) The annual general meeting shall not be held pending the decision of the civil court under sub-section (8) or sub-section (9) as the case may be.

Although we on this side hold that the employees deserve much greater participation than ordinary members who only hold shares, yet, in order to pursue the line of least resistance and with the realisation that we cannot have all our own way in the social structure, we have proposed the figure 25 per cent for their participation. This 25 per cent, is both as regards the number which the employees are entitled to elect—the proposal is that they should elect only 25 per cent of the number of members—and also as regards the voting power of the employees' delegates. The aggregate voting power is 25 per cent of the voting power.

(*Lok Sabha*, 30-8-1955, *vide Debates, Vol. VI, No.* 26, *Cols.* 11489—492).

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2·61. The amendment to clause 254 ran as follows:—

"254A. **Election of Directors by Employees.**—(1) The employees of a company who are workmen within the meaning of the Industrial Disputes Act (XIV of 1947) shall elect by secret ballot from amongst themselves one director or a number of directors equal to one fourth of the total number of directors, whichever number is greater.

(2) A director elected under sub-section (1) hold office—

(a) if elected before the statutory meeting from the date of such meeting to the day previous to the date on which the annual general meeting is held, and

(b) if elected before any annual meeting, from the date on which such annual general meeting is held till the day previous to the date on which the next annual general is held.

(3) the said employees shall at any time be entitled to elect such number of directors as may be necessary to make the number of such directors equal to the fourth of the total number of directors, and shall elect such directors when additional directors are appointed under Section 259".

Now I need not repeat at great length what principles are involved in this clause. It has been accepted as a matter of principle, I may say, by Government and by political parties alike that we want employees' participation in the management of companies; that the employees have an interest in the companies and that the employees are in the position of partners with the entrepreneurs of companies. Therefore, it is in the fitness of things that we give them some opportunity to participate in the management in some way or other. I had thought that the best scheme would have been to let them participate at all levels: at the plenary level by electing delegates to the general meeting as well as at the level of the board of directors by taking actual part in the management.

(*Lok Sabha*, 1-9-1955, *vide Debates, Vol. VI, No.* 28, *Cols.* 11833-834).

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2·65. *Shri Asoka Mehta* wanted the Finance Minister not to dismiss the idea of giving right of participation in the management of companies to the workers as 'dogma'. It was, in his view an "entirely pragmatic" thing. He believed that the "workers' participation in the management of industries is likely to be a turning point in the economic democracy or socialist democracy that we want to create". He cited the instance of Yugoslavia where 'workers' councils' existed. Similarly, he pointed out the position of workers in the Western Germany. Under the German Law, almost 50 per cent of the supervisory board which enjoyed some of the powers of board of directors in our country, was composed of workers' representatives. Making his views clear on this subject *Shri Mehta* said:

I want to create conditions where not only the shareholders' right will be safeguarded, not only where entrepreneurs will be able to put forward their best, but the workers will feel that a new kind of society, a new civilisation is sought to be created in my country. If that is to happen, can there be a Company Law without any kind of provision to that effect? In the quotation from the Company Law Committee's report which the Finance Minister has read, he has said last time : "The Company Law attempts to provide a legal framework for the corporate form of business management in which organisation, labour and capital are brought together in a particular form". After all, labour is mentioned as one of the forces to be brought together. This corporate form has to take into consideration labour also according to the

Finance Minister himself. But, I find no reference to labour in this voluminous report of the Joint Committee. I would, therefore, request the Finance Minister to give his consideration to this aspect and, if he is not willing, I will, with due respect to him, request the House to consider whether the time has not come when we should amend the Company Law in order to provide to labour its legitimate share in the management of industries.

(Lok Sabha, 10-3-1955, vide Debates, Vol. V, No. 13, Cols. 9844-46).

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2·60. But *Shri Asoka Mehta* opposed *Shri Sadhan Gupta's* scheme for workers' participation and said:

I am sorry to have to oppose the amendments moved by my friend Shri Sadhan Gupta. I am as much wedded to the idea of the workers participating in industry as he is. But, this question has to be considered in its proper perspective.

Workers' participation has usually meant giving the workers' representation on the board of directors. You will remember that on a previous occasion, I had pointed out the limits that exist in Germany in giving co-determination rights to workers in Germany. There is a Council of Supervision. It is found that the council consists of half of the members elected by the shareholders and the other half elected by workers. But the two halves are completely kept distinct. Here what his amendment seeks to do is to inter-twine the two into one. They want to endow the workers with some of the rights enjoyed by the shareholders. In the scheme of the Bill the employees will have opportunities of becoming shareholders in their own rights. I believe, if I am not wrong, the Bill cantemplates loans being given to the employees to enable them to buy shares of the company so that the employees may also come forward as shareholders. The conditions in which the shareholders view the affairs of the company and conditions in which the employees view the affairs of the company are not always the same. They are dissimilar. Sometimes they even come into conflict. It will be possible for a person who is an employee to be a shareholder and to represent the interests of the shareholders in a shareholders' meeting. But it will be very very difficult to bring together in a single meeting the shareholders and employees and to put them on a par.

I find that Shri Sadhan Gupta is trying to bring about a state of affairs where the employees will also become shareholders in their own rights and also have the rights of shareholders without becoming shareholders. It will be somewhat an anomalous situation and far from helping workers' participation it might create further difficulties in working out the projects that we have in view. In

a matter like this, as was rightly pointed out by the Finance Minister last time, we have got to move forward with a certain amount of caution. Participation of workers at the higher level may be a very desirable thing. But participation at the lower levels has got to be worked out with full care and full deliberation. I, therefore, feel that this kind of inter-twining between shareholders and the employees that is being suggested may prove to be a leap in the dark and we should, therefore, not embark upon such an experiment. It has not been tried anywhere in the world. We should begin with introducing the element of workers' participation in the manner in which it has been done in other countries such as Western Germany or even in the Soviet Union in the limited sense.

(*Lok Sabha*, 30-8-1955, *vide Debates, Vol. VI. No.* 26, *Cols.* 11504—508).

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2·67. *Shri K. P. Tripathi*, a leading spokesman of the labour gave strong support to the cause of workers and dealt with the question as to how the workers' representatives should be nominated or elected on the board of directors of the company. He spoke as follows :

Most responsible people say that workers are shareholders in the industry but when we try to find out whether we are shareholders we find that we have been completely omitted from this company law. If you think that a really socialistic pattern of society has to be evolved then, as the workers are shareholders in the industry, we shall have to take powers into our hands so that we might nominate representatives of the workers where there are good trade unions in industries, where the trade unions represent more than 50 per cent of the workers. Government should take power in their hands to nominate from them their representatives on the directorates. That would be greatly advantageous because we do not get a large amount of information and a great deal of shady things happen.

(*Lok Sabha*, 12-8-1955, *vide Debates, Vol. V, No.* 14, *Col.* 9927).

SECTION FIVE

MANAGING AGENCY SYSTEM AND ADVISORY COMMISSION

2·68. Managing Agencies: Progressive Increase in the number of restrictions since 1936.

The historical growth of restrictions on the working of managing agencies in the corporate field was explained in the Rajya Sabha by *Shri Deshmukh* in the following passage:

> In the 1913 Act, there was no regulatory provision whatsoever in regard to managing agents. In practice, a firm or limited company called managing agents used to take large powers under the articles and performed the functions of the managing director or manager or secretary. The essence of managing agent is one who exercises his powers by agreement with the company or under the articles of association or memorandum, not delegated power by the Board. That is the distinction between managing agents and others. In other words, there is a transfer of sovereignty by agreement subject of course to all the regulations and all the controls or the provisions which are contained in the Acts from time to time. Subject to that, it is a contract of that kind where sovereignty, so to speak, is transferred from the shareholders to the managing agents. Now as I said, in 1913 there was no regulation at all. In 1936 about 11 restrictions were placed on managing agents for the first time. For example, appointment for 20 years is now reduced to 15 and 10. Then the remuneration was fixed at a percentage of net profit but net profits themselves were very loosely defined and office expenses were allowed which are not allowed now. Then there was another restriction on loans to managing agents out of the moneys of the company. That is a prohibition which continues. Then loans by company to another under the same managing agent were prohibited. That also continues, though we have changed it a bit. We have now given power to shareholders to approve of the transaction, subject to Government approval and so on. Then purchase of shares by another company under the same managing agent is to be approved by the directors. That was another power. The power to issue debenture by managing agent was prohibited. Then investment of funds of the company and the limits thereof were to be approved by the Board for the first time in 1936. Then they were not to engage in business competing with the business of the managed company. Then they were not to appoint more than one-third of the directors. Then there was a question of compensation. That was prohibited if it was due to default or negligence on the part of the managing agents. And lastly, there was a provision inserted for the removal of the managing agent for fraud or breach of trust.

I believe if the war had not intervened and if, therefore, the Government of the day had been freer to devote more attention to the administration of the Act, maybe we would not have found so many abuses as were complained of. Also the very fact that there was a war led to a crop of abuses. Morality was casualty not only in this country, as some Hon. Member said, but it was the first casualty of the war all over the world. And that is why we are now faced with a situation where we have to impose many more stringent regulations and almost change the managing agency system out of recognition.

The first step taken was in 1951 where we put in another five restrictions which were of very great importance. For the first time we interfered, so to say, with the autonomy of the company. The managing agent was to be approved. If there was a transfer of the managing agency or if there was a change in the composition of the managing agency, then that was to be approved. These provisions we have strengthened here in this Bill by making it impossible for managing agency to be hereditary or automatic. If we find that it brings in blood which could not be regarded as competent or fresh or anything like that, then we have power to interfere in the composition of the managing agency. The terms of remuneration were also for the first time brought under the regulation of the executive authority. The Bill itself which was based on the recommendations of an expert committee added another thirteen restrictions I shall not name them again—but they were in addition to those eleven imposed in 1936 and the five imposed in 1951. That is to say, to sixteen were added another thirteen. And then the Joint Select Committee added another three restrictions, all of very fundamental importance, at least two were. In one case, of course, they reduced the remuneration from 12½ per cent to 10 per cent. Also no person is to be managing agent of more than ten companies. We regard these as fundamental restrictions. Moreover, the Central Government has power to notify the specific classes of industries which shall not have managing agents. That could very well have wide consequences. Then lastly, the Bill as passed by the Lok Sabha has added another four restrictions. So since 1936 we have about 25 further restrictions imposed on the managing agents, that is to say, in about 20 years. Therefore, it is very right to say that what we are dealing with is not the managing agency which perhaps was the basis of the changes which were brought forward before some special officer or before some committee and so forth. We deal with quite a different category of people.

(*Rajya Sabha*, 22-9-1955, *vide Debates*, *Vol. X*, *No.* 27, *Cols.* 4051—54).

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2·69. Managing Agency System: Objectives of the restrictions placed thereon.

The provisions restricting the powers of management, particularly of the managing agents, in the new Act of 1956, aimed at securing the following four main objectives:

(a) to ensure the constitution of independent board of directors, without the predominance of the representatives of the management over those representing the shareholders;

(b) to ensure selection of active individuals as directors;

(c) to ensure adequate exercise of control by directors over managing agents; and

(d) to prevent the misuse of powers by managing agents.

These objectives were emphasised by *Shri Deshmukh* in the following passage in his speech in the Lok Sabha:

> Clauses 236 to 306 which deal with directors are designed to ensure, firstly, the constitution of independent Boards of directors consisting of representatives of the management as well as the shareholders but without dominance of the former over the latter; secondly, the selection as directors of active individuals who can devote sufficient time and thought to the working of the companies which they are supposed to direct; thirdly, the adequate exercise of control by directors over managing agents where the day-to-day management of a company is in the hands of the latter; and fourthly, the prevention of misuse by the directors of the powers which they are entitled to exercise on behalf of a company. Past experience has shown that some control is needed over the exercise of some of these powers, namely, the power to make loans, the power to enter into contracts, the power to sell, lease or otherwise dispose of property, the power to remit or extend the date of repayment of debt and the power to borrow on behalf of the company. The House is not unaware that some of these provisions have already given rise to acute controversy and it has been argued on behalf of the management that they unduly restrict their initiative and enterprise and may in the long run prove to be detrimental to the interests of the companies themselves. To what extent these fears are justified will depend on the view one takes of the detailed provisions of this Bill relating to these matters. I do not like to anticipate the recommendations of the Select Committee. But I am sure that I shall have the support of the House in saying that nothing is farther from the thoughts of anyone here than to impose unnecessary restrictions on *bona fide* business. Our proposals on this subject have been formulated only to prevent abuses and malpractices and not to hinder sound and honest management of companies.

(*Lok Sabha*, 28-4-1954, *vide Debates, Vol. IV, No.* 55, *Cols.* 5965-66).

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2·70. Managing Agency System: New provisions in accord with the interests of shareholders.

The new provisions relating to the managing agency system were in accord with the interests of the shareholders. *Shri Deshmukh* indicated this in the following extract from his speech in the Lok Sabha:

> In their memorandum submitted to the Joint Committee and in the course of their evidence before the Joint Committee, the representatives of this Association (Bombay Shareholders' Association) clearly defined their attitude towards the managing agency system. I quote below from the memorandum:
>
> "A sudden termination of the managing agency system, in our opinion, is undesirable, because it will disorganise industrial management and therefore retard any new industrial development which we regard as vital. We are, therefore, of the opinion that while the managing agency system may be continued at present, its working, financial, managerial, business and other aspects should be reviewed after 5 years to ascertain exactly the services which the managing agents render to the industry in the changed economic climate in the country now prevailing."
>
> The House will know that this is precisely what the Joint Committee have attempted to do in the basic provisions of the Bill relating to managing agents. The Committee have devised proposals which seem to be in accord with the interests of the shareholders as represented by this Association as well as to accord with the general economic interests of the country.

(*Lok Sabha*, 10-8-1955, *vide Debates, Vol. V, No.* 13, *Cols.* 9812-13).

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2·71. Managing Agency System: Question of abolition

Speaking on the question of abolition of managing agency system *Shri C. D. Deshmukh* made a specific mention of the financial services rendered by the managing agents and said that new financial agencies like the State Finance Corporations etc. would take time to grow and expand their activities. Till they developed, managing agents would have a good job to do. Moreover, while considering the question of abolishing the managing agency system, 'all the circumstances of an industry' should be looked into. It was for this, that the Joint Committee had suggested that a detailed investigation should to be undertaken, before it was decided to abolish managing agency system in any particular industry which did not require any promotional or financial assistance from this system. *Shri Deshmukh* emphasised these considerations in the following words:

> They have taken note of the fact that in the past many managing agents have been guilty of malpractices. They have also taken note of the fact that slowly promotional and financing activities have not remained the

sole preserve of the managing agents. There are new institutions coming up and perhaps new methods of promotion, but the growth of all these will take a little time. The State Finance Corporation, for instance, has just started. Perhaps some of them have issued their first year's report, but they have a long way to go yet before they cover even a part of the field which is for them to cover because there is a division of fields, not by law perhaps but by understanding or convention between the State Finance Corporations and the Central Industrial Finance Corporation. Taking notice of these two facts, the Joint Committee thought that it would be good to investigate patiently and with expert assistance the case of industries as a whole to find out whether the state of industry is such that it requires any special encouragement to promotional efforts or to financing activities. If after investigating all the circumstances of an industry and, as has been suggested, with the advice of the Advisory Commission, they come to the conclusion that it is no longer necessary in a particular industry to have this peculiar system of management, in that case Government has power to declare that there shall be no more managing agency in that industry. But by inference it follows that in the other industries where after investigation you find that there is room for promotional effort or for financing activities, you should not discard a method which has been found to be useful and for which you expect some use in the future.

(*Lok Sabha*, 19-8-1955, *vide Debates, Vol. VI, No.* 19, *Cols.* 10516-17).

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2·72. In reply to the pressing demand for the forthright abolition of the managing agency system in the very near future, Shri *Deshmukh* said that that suggestion had not found favour with the Joint Committee of Parliament which, while conceding the demand for abolition, thought it proper to leave the time, pace and manner of abolition of the system to Government. This recommendation of the Committee has been given effect to in the provisions of sections 324, 326 and 330 of the Act (clauses 323, 325 and 329 of the Bill as approved by the Joint Committee). Supporting the Government spokesmen, *Shri C. C. Shah* threw light on this important issue in the following words:

It was not the view of the Joint Committee that the managing agency system could be abolished forthwith because that would create a vacuum. It was neither the view of the Joint Committee that a date should be fixed by the Bill itself because they thought that while the managing agency system had to be abolished, the time, the pace and the manner of its abolition must be left to the Government. The manner is indicated by clauses 323 and 325 viz. industrywise and unitwise and the time and pace are left to the Government. But the intention, I submit, is unmistakably clear and that intention is that the managing agency system, at a future date—not at

a very distant future—will be abolished.

(*Lok Sabha*, 5-9-1955, *vide Debates, Vol. VII, No.* 31, *Col.* 12352).

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2·73. Managing Agency System: Abuses to be curbed.

The various provisions of the new Companies Act, 1956, having a bearing on the working of the managing agency system, aimed at preventing the abuses and malpractices that came to be noticed in recent years. Shorn of the abuses, the system could play a useful role in the 'present structural organisation in our trade and industry'. The scheme of the provisions in the new law gave a new lease of life to this system under certain conditions. On the important question of continuance of managing agency system, *Shri Deshmukh* made the following observations:

> Clauses 307 to 359 of the Bill deal with the terms and conditions of appointment of managing agents, their remuneration, powers of managing agents, *vis-a-vis* directors and the powers and duties of the managing agents in regard to borrowing, loans, contracts as well as purchases. The object of the proposed reform is to prevent widespread abuse of the powers conferred on the managing agents on these subjects which took place all over the country, more particularly, since the commencement of World War II. I am sure, all of us will agree, irrespective of our attitude towards the managing agency system, that these provisions are of key importance in the scheme of reform envisaged in this Bill. Government are in agreement with the unanimous view of the Company Law Committee that in the present economic structure of the country, managing agency will continue to have its use for some time to come and that cleansed of the abuses and malpractices which have disfigured its working in the recent past, the system can yet prove to be a potent instrument for tapping the springs of private enterprise. This view is not based only on history and tradition, but on an objective assessment of the present structural organisation in our trade and industry and the obvious gaps in our institutional set-up, particularly, in the closely related fields of company investment and company finance, gaps which it will take some years to close. It is, therefore, of the utmost importance that the system should be purged of the evils which have crept into it as early as possible so that it can play a worthy and useful role in the future development of the private sector. Here again, as in the case of directors, the problem before the House is one of striking a balance between the admitted case for regulation and control and the need for preserving the initiative and resilience of the honest managing agent. By and large, the provisions of the Bill under this head embody, in our judgment, a reasonable compromise.

(*Lok Sabha*, 28-4-1954, *vide Debates, Vol. IV, No.* 55, *Cols.* 5967-68).

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2.74. The late *Shri M. C. Shah*, the then Minister for Revenue and Civil Expenditure said the following in the Rajya Sabha in connection with the mending of the managing agency system rather than bringing it to an immediate and abrupt end.

> Clauses 307 to 359 of the Bill deal with managing agents, the terms and conditions of their appointment, their remuneration and their powers and duties in regard to loans, contracts, sales and purchases. The object of these clauses is to prevent abuses and malpractices by managing agents, and to ensure that, in the exercise of their duties, managing agents act not only under the general control and supervision of directors, but in vital matters also give due consideration of the views of shareholders. Hon. Members will recollect that in course of his speech in the other House, the Hon. the Finance Minister briefly elucidated the Government's general attitude towards the managing agency system. The Company Law Committee was unanimously of the view that, although many managing agents have in the past, and more particularly since the end of World War II, abused their powers and indulged in malpractices, yet the system, as such, is still capable of being used as an instrument for good and of producing beneficent results, provided it is purged of the evils which had entered into it. The main reason why the Company Law Committee recommended continued reliance on the managing agency system was the absence of properly organised capital market in this country, consisting of suitable institutions capable of discharging those functions relating to the promotion and formation of a company which are now performed in this country, by and large, by managing agents and their friends. In Government's view, there is considerable force in this argument, and it would, therefore, be an act of prudence to mend and not to end this system, till, at any rate, a properly organised capital market, consisting of the specialised machinery and services needed for new issues and the financial institutions required for canalising the flow of savings into corporate investment have been organised and developed in this country.

(*Rajya Sabha*, 12-5-1954, *vide Debates, Vol. VI, No.* 45, Col. 6205-06).

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2·75. **Managing Agency System: Reasons for reforming it rather than ending it.**

Shri Deshmukh gave the reasons why 'we should not end this system unless we have first tried mending it.'

> I confess that I have no statistical evidence which would point one way or the other except that *prima facie* I am prepared to accept the findings of the Expert Committee which devoted a great deal of attention to this matter. I am prepared to accept their findings, that the time has not come for eliminating the managing agency system.

> Here again, it is a matter for the Select Committee and I think, that apart from any constitutional issues of compensation and so on, they will still come to the conclusion that if we were to eliminate the managing agency system we would probably be dealing a very severe blow to the expansion of industrialisation in this country. Therefore, it seems to me that we should not end this system unless we have first tried mending it. After all, this is the first major opportunity that we are taking of mending it and my own advice would be that we should wait and see how in our legal environment we are able to regulate this to secure the best interests of the shareholders and the general public.

(*Lok Sabha*, 3-5-1954, *vide Debates, Vol. IV, No. 59, Cols.* 6419-20).

2.76. In connection with the question of reforming the managing agency system, the late *Shri M. C. Shah* made the following important observations of general nature.

> It is equally pertinent to remember that no reform of company law, which does not take into account the present institutional set-up in the economic field, can lay any claim to constructive thinking. If, in our anxiety to eradicate known and established evils in company management we try to sweep away such of the existing institutions as have been built up over the years, we may be hard put to it to fill up the vacuum caused by their sudden disappearance. While in course of time we shall no doubt succeed in building up new institutions to take the place of the old, during the period of transition while the vacuum still exists, we shall have needlessly hamstrung our efforts to promote the development of trade and industry in the private sector. The way of prudence would, therefore seem to lie in reforming existing institutions, while this process of building up new ones proceeds apace.

(*Rajya Sabha*, 12-5-1954, *vide Debates, Vol. VI, No.* 45, *Cols.* 6209-10).

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2.77. The late *Shri M. C. Shah* reiterated the Government's view on mending the managing agency system instead of ending it, in the Rajya Sabha in the following words:

> The main reason why the Company Law Committee recommended continued reliance on the managing agency system was the absence of a properly organised capital market in this country, consisting of suitable institutions capable of discharging those functions relating to the promotion and formation of a company which are now performed in this country, by and large by managing agents and their friends. In Government's view, there is considerable force in this argument and it would, therefore, be an act of prudence to mend and not to end this system, till at any rate, a properly organised capital market, consisting of the specialised machinery

and services needed for new issues and the financial institutions required for canalising the flow of savings into corporate investment have been organised and developed in this country.

(*Rajya Sabha*, 12-5-1954, *vide Debates, Vol. VI, No.* 45, *Col.* 6206).

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2·78. Managing Agency System: Continuance related to social objectives and industrial development.

That the managing agency system was eventually to come to an end, was a definite decision of the Joint Committee. It had, however, not recommended a forthright end to it. The continuance of managing agencies was to be adjudged not only in the context of industrial development but also of the social objectives of the Act. Supporting *Shri Deshmukh* the then Finance Minister, *Shri C. C. Shah* spoke as follows:

> It is argued: if you abolish that system industrial development of the country will suffer. These considerations were fully before the Joint Committee and they were fully aware of the contributions which this system had made to the industrial development of the country and was expected to make in the Second Five Year Plan and therefore, deliberately the date 15th August, 1960 is put by which time the Second Five Year Plan will be long in fulfilment.
>
> I can assure the Hon. House that there was no provision of this Bill to which they (the Joint Committee) gave more anxious consideration than to this provision because they were fully alive that while we wanted industrial development of the country and we did not want to take any risk with the Second Five Year Plan which we had in mind. We have also certain social objectives to fulfil and in the fulfilment of these social objectives we cannot permit this system which has outlived its utility to continue—not only outlived but which is a kind of industrial feudalism, which cannot be permitted to continue any further. It is a definite decision that it will come to an end.

(*Lok Sabha*, 5-9-1955, *vide Debates, Vol. VII, No.* 31, *Cols.* 12352-353).

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2·79. Sections 324 and 326: Notification of termination of managing agencies and renewal.

Shri Deshmukh explained the significance of clauses 323 and 325 of the Companies Bill (Sections 324 and 326 of the Act) in the following passage.

> Anyone, as I said, could connive at the massive evidence that has come forward before us in regard to the evils that have been encouraged by the managing agency system over a period of years. From time to time, attention has been given to correcting this state of affairs. Therefore, I begin by saying that there is a bias now

in trying to see whether any good is served at all by continuing this particular form of managing joint stock companies. That bias undoubtedly is there, because, as I said, of the weight of this evidence. On the other hand, as I made it clear, there is no judgment at the moment,—although there might have been judgments in the past to which the Hon. Members have referred either in the party or elsewhere—there is no judgment at the present that it is our definite intention steadily and systematically to abolish managing agencies. We have divided the problem into two parts, having in view our responsibilities in regard to securing that the private sector should, so to speak, deliver the goods so far as the next few years are concerned. We have, therefore, had to take into account the possible advantages of that system as shown by past historical evidence. We want to satisfy ourselves, before we take any action, that these alleged advantages do not exist either by an industry or by a particular unit. Therefore, the first thing that we have provided for is what is embodied in clause 323. We shall examine industries and find out whether for the industries as a whole, it is necessary to continue the managing agency system. Now, it would not be reasonable to read that clause as if it was never intended to exercise that power. Neither would it be reasonable to assume that that clause is intended to enable Government to notify all industries as industries in which no managing agents are required. Because, if that intention was clear today, it would have been easy to frame the Bill accordingly: in other words, either not to provide for power to terminate managing agencies or to do the reverse. So, the intention is what it is—to make an honest and as comprehensive an examination as possible of various industries, and in doing so, as I have just said, we shall be anxious to have the best expert advice that we can get on that matter.

Now, if that examination has been concluded and we come to the conclusion that in a number of industries there does not seem to be any need for the managing agencies that the nation would not lose anything quite significant if we abolish them, then the next logical step would be to issue a notification and to say that after the period of notice, no managing agent will exist in that particular industry. That means that at any given period of time—one can only consider it with reference to a period of time, because what is true today may not be true fifty years hence or a hundred years hence, and nobody knows—so far as one can see, the judgment would be that for the other industries, till their examination is completed or till the occassion for examining them has arisen, there may be some good which, will be served by allowing this form of management to continue subject to the safeguards that we are providing for in the new Bill.

'Then we come to individual capacity and individual qualifications to continue as managing agents, and that is when we come to clause 325. In clause 325, the sub-clause is important. The first sub-clause is that it is not against the public interest to allow the company to have a managing agent. What we, therefore, consider is, for the industry as a whole, may be, it is necessary to have a managing agent and yet, in respect of that particular company, it may be against the public interest to allow the company to have a managing agent, in which case we would say, 'we feel that the interests of the company will not be served by its having a managing agent' and in spite of the fact that this is a non-notified industry, we would say 'we will not allow a managing agent.' If we proceed a little further, that is to say, if we feel that some public interest is likely to be served by the company being allowed to have a managing agent if it wants to it can serve the public interest in other ways if it wants to and it is not that we want to force the managing agency system on it—and if it is alleged that they should have a managing agent in the public interests, then we will proceed to find out whether that managing agent is a fit and proper person and whether the conditions of the managing agency agreement are fair and reasonable. If we find the scale of remuneration is unconscionable, then certainly we can tell the managing agent, 'Your existence may further the public interests of this company and you may be the fit or proper person but it looks to us as if you are demanding too high a price for the services you are hiring by yourself to render to the company' and it would be open to us to place that proposition before the managing agent, saying that 'unless whatever scale may appear fair to us, we will not agree to the renewal or to the establishment of your managing agency.'

(*Lok Sabha*, 6-9-1955, *vide Debates, Vol. VII, No.* 32, *Cols.* 12397—399).

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2.80. The powers conferred on Government under original clauses 323 and 325 (now Sections 324 and 326 of the Act) to notify that companies engaged in specified classes of industry or business shall not have managing agents and that the appointment etc. of managing agents would be accorded under certain circumstances only, were also explained by *Shri C. C. Shah* in the Lok Sabha.

'The powers given to the Government embodied in clauses 323 and 325 mean that the Government will abolish the managing agency industrywise as well as unitwise. And, it is my submission that the clear meaning of clauses 323 and 325 is that while the managing agency system is to be abolished, that abolition has to be gradual, the time and pace of such abolition being left

to the Government. There is no other meaning which can come out of these two clauses 323 and 325.

Now, I will turn to clause 323. It is true that there can be no meaning in giving this power to the Government for abolishing the system industrywise unless the power has to be exercised. And, as I will presently point out, it is intended and expected that as regards certain industries that power will be and can be exercised in the near future. As regards other industries, it may be exercised a little later. If I may draw the attention of the House to sub-clause (2), it says that—where any such company has a managing agent on the specified date after the Government has issued the requisite notification, the term of office of the managing agent shall, if it does not expire earlier, expire at the end of three years from the specified date or 15th August, 1960 whichever is later. The date 15th August 1960, is deliberately put in this clause expecting that there are certain industries in which Government can immediately issue a notification which will leave three years' time until we reach the 15th August 1960, by which in those industries there shall be on managing agency. There are other industries in which Government can do it at a later stage, and at that stage three years' time is allowed before the notification becomes effective. The considerations that have been advanced were that for the industrial development of the country, the managing agency system is necessary for promotional and financial activities because it is the managing agents who provide the promotional, enterprising risk and the financial strength which an industry needs. The Joint Committee carefully took into account these considerations and yet came to the conclusion that there are industries in which now and a little later those kinds of promotional and financial activities are no longer required. Therefore, Government could issue a notification abolishing the managing agency system in those industries. If that were not the view of the Joint Committee, there is no meaning in embodying clause 323 in the Bill. It is argued that if the Government wanted to take such an action, it could have been done at any stage and clause 323 is unnecessary at this stage because it introduced an element of uncertainty. Now, it is for precisely an argument of that character that clause 323 is put in here because it is not as if at a later stage that the Government comes to that conclusion; but the view was that there are some industries in which this provision can be applied immediately and it is expected that Government will apply it in the near future. For those industries where this kind of notification cannot be issued, clause 325 applies and the Government will examine unit-wise whether in each of those units, the proposed managing agent, who is to be appointed or reappointed, answers or fulfils

the conditions mentioned in sub-section (2). It is not only that the Government shall accord its approval unless it is this that and the other, but it enjoined upon the Government that it shall not accord its approval unless it is this that and the other, but it enjoined upon fulfilled. The Joint Committee has deliberately put this wording enjoining upon the Government that it shall not accord its approval unless the Government is satisfied that it is in public interest to do so, that the managing agent is a fit and proper person, and that the conditions are fulfilled by the managing agent. Therefore, while exercising its powers under clause 325, it will be the duty of the Government not only to satisfy itself that it is in the public interest but also to satisfy itself that the managing agent is a fit and proper person. Arguments have been advanced here that it will be very difficult for Government to say that a particular individual, firm or limited company proposed is a fit and proper person or not. There are well known canons by which that kind of fitness can be determined. It is not for me to enter into a detailed discussion at this stage on that point, but Government will lay down certain well-known principles by which it will be guided in the exercise of the powers given to it under clause 325.

(*Lok Sabha*, 5-9-1955, *vide Debates, Vol. VII, No.* 31, *Cols.* 12349—351).

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2.81. Further in regard to the exercise of powers under Section 326 of the Act, the late *Shri M. C. Shah*, the then Minister for Revenue and Civil Expenditure, assured Parliament that the powers would be exercised 'judiciously' by Government. He spoke as follows in the Rajya Sabha:

So, whenever there is an application for the appointment or reappointment of a managing agent, Government means to exercise the powers that have been given in clause 326 judiciously, but at the same time effectively. I can assure that these powers under this clause will be exercised with great care and effect at the same time judiciously. I agree with that view (that the decision of the Government should be final) though we have not put it in the clause. If we find that there are persons who want to take the Government to litigation and to courts, then we will have to bring an amending Bill.

(*Rajya Sabha*, 27-9-1955. *vide Debates, Vol. X, No.* 31, *Col.* 4866).

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2·82. Managing Agency System: Exercise of powers by Government.

In the Rajya Sabha, *Shri Deshmukh* said that with the enormous powers taken under the new law, 'we shall be able to put a stop to many of these abuses' of the managing agency system. A defeatist attitude was not warranted. He said :

That is, shorn of all abuses, it is likely to make a contribution in a country in which promotional activities or

financing capacity is still not in abundant supply. That is the question which every one must consider. My reply is that we should not take a defeatist attitude in regard to our capacity to rectify abuses, otherwise the whole of this Bill has no meaning. If you are going to start with this assumption that whatever you do, these abuses are going to continue, I say this House should reject the whole of this Bill. But I am quite convinced that with the enormous powers that we are going to assume, we shall be able to put a stop to many of these abuses. And that brings me to this particular method which we are going to adopt in regard to managing agency systems—consider it as individual systems so to speak, about individual enterprises. Under clause 326 we say that we shall not give our approval to the continuance of the managing agency system unless we are satisfied on certain counts. What are these counts? That it is not against public interest to continue that managing agency in that particular enterprise Surely no one can raise any objection if we make sure that the public interest is not prejudiced by the continuance of that managing agency. I add here again that even if we take such decision under clause 326 and supposing an inquiry takes place in that industry in which this enterprise happens to be included, and in 1961 or 1962 one comes to the conclusion that for the industry as a whole no managing agents are required, judged from the positive criteria as I have already indicated, then irrespective of what action you take under clause 326 a notification under clause 324 will issue subject to the device that may be given by the Houses. That is the first condition. The other two conditions are personal fitness, which gets rid of hereditary element, and fair and reasonable terms.

It will be relevant, when we come to further amendments here because it comprises almost everything—remuneration and any other conditions that the managing agents may have sought to impose, division of power between the company and the managing agents and in order to make the assurance doubly sure, so to speak, there are also general conditions which it would be open to the Government to impose and to see that these conditions have been fulfilled by the managing agents in that particular case before that managing agency is continued, I think, that this, from all points of view, is a system which is calculated most to further the interest of the country.

(*Rajya Sabha*, 27-9-1955, *vide Debates, Vol. X, No.* 31, *Cols.* 4828—30).

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2.83. Section 330: Termination of managing agencies in 1960.

The significance of the special provisions of Section 330 of the Act (clause 329 of the Bill) was brought out by *Shri Deshmukh* in the following passage:

> Then we come to clause 329. It says that all managing agency agreements will come to an end on the 15th August 1960. What is the provision for? It is for this reason that by 1960 the Government must have an opportunity to examine every managing agency agreement in every industry, unitwise and industrywise. Therefore, the last two lines are there: 'Unless before that date he is re-appointed for a further term in accordance with the provisions contained in this Act.' Therefore, it is expected that two or three years prior to 1960, every managing agent shall go before his company first to seek the approval of that company. Having obtained that approval, he has come to the Government to seek their approval and therefore, before we reach 15th August 1960, Government has to decide both industry-wise and unit-wise as to the industries in which managing agencies will be permitted and in non-notified industries as to the individuals or firms which will be permitted to act as managing agents.

(*Lok Sabha*, 5-9-1955, *vide Debates, Vol. VII, No.* 31, *Cols.* 12351-352).

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2.84. The considerations which would decide the continuance or otherwise of the managing agency system in any industry or industries in future, were also referred to in the Rajya Sabha by the late *Shri M. C. Shah*. He expected the Government to be in a better position to deal with the question of renewal of managing agencies in 1960.

> I am also sure that at the end of four years i.e. in 1960, we will be in a better position to decide whether the managing agency system, even in this revised form is necessary in one, two or more industries. When we allow some managing agencies to continue, it will be considered whether the industry concerned is a very vital one for the industrial development of the country. We have made that very clear so often. We have given assurances that it will be our sacred duty to see impartially whether certain managing agencies, if we allow them, will be in the best interests of the country. If we find that it is not in the interests of the country, if we find that the persons concerned in those industries are not fit and proper persons, then we will not allow them there.

(*Rajya Sabha*, 28-9-1955, *vide Debates, Vol. X, No.* 32, *Col.* 5186).

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2·85. Managing Agencies: Conditions for their working.

Apart from placing conditions with regard to remuneration and extent of control, some other conditions could also be prescribed by Government for compliance by the managing agents. These would be prescribed under the residuary powers conferred on Government. An indication of this was given by *Shri Deshmukh* in the following passage:

> Then I come to the other conditions. I cannot say what those conditions will be, apart from the condition of remuneration and the extent of control which the managing agent is going to exercise under his agreement. But one can conceive that there may be other conditions by which the Central Government may wish to bind the managing agent. It is a kind of residuary general power. Unless we exercise those powers in a number of cases, I would not be able to say what are the category of cases in which other conditions have been imposed, but, nevertheless, I think it is wholesome to have that residuary power given to the Government. That is all that we propose to do, and as I said, I do not wish to say whether it amounts to a determination to abolish the managing agency system or it amounts to a persistence in the desire to retain the managing agency system. It is exactly what the law says.

(*Lok Sabha*, 6-9-1955, *vide Debates, Vol. VII, No.* 32, *Col.* 12400).

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2·86. Managing Agents: Approval to their appointment or reappointment.

The approval to the appointment or re-appointment of a managing agent would be given after looking into whether the record of the managing agent was good and they were properly qualified and if they fulfilled other conditions, if any, prescribed by the administrative authority. The onus would be on the managing agents to prove that 'they will be able to further the economic interests of the country' if they were allowed to continue. Against this larger background the managing agents would have to establish their *bona fides* as 'fit and proper' persons to whom the management of the company could be entrusted. On this, *Shri Deshmukh's* following observations are important:

> Therefore, one goes to the next provision which is approval of individual managing agents, obviously by implication, in industries which are not notified and, therefore, industries in which there may be some use for managing agents. The Joint Committee thought that the thing of which one ought to be certain is whether the record of the managing agent is good, whether he is properly qualified, whether he has fulfilled any of the conditions which may have been prescribed by the Central authority. But all the time, the main criterion will be: in what way can the interest of the country and the advancement of industries in the private sector be achieved? If the answer is that in a particular

industry or in a particular concern it looks desirable, after having considered all the facts of the case, to continue it for whatever time they may decide, then I see nothing wrong in Government taking powers so to continue that managing agency. Hon. Members have asked whether the language of the Bill, as reported, does or does not show a bias or does or does not show an intention to abolish it. I say that all judgment is premature, certainly the judgment that it is here and now decided to abolish or quench the managing agency system all over, in all industries. There is nothing in the language of the provisions here to justify that, but I am free to say that it will be for anyone to infer, both from the speeches made here and from what has been written outside in the country and spoken, that there is a general bias here against the managing agents, and therefore, the onus will lie very heavily on them to prove that if they are allowed to continue, they will be able to further the economic interests of the country.

(*Lok Sabha*, 10-8-1955, *vide Debates, Vol. VI, No.* 19, *Cols.* 10517-18).

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2·87. Managing Agency System: Abolition after proper study of situation.

In the Rajya Sabha *Shri Deshmukh* suggested that instead of abolishing the managing agencies rightaway, the situation might be kept under observation for a few years more and the decision on their abolition might be taken later in the light of the additional data collected during the next few years.

We do not know precisely what is the record of the managing agent from the statistical or quantitative point of view. So, for a few years we shall examine these matters as well as we may and we have organised a Department through which we shall do so. Then during these four years we shall have started investigations to find out whether there is any category or class of industries for which promotional activity is not required so much, because may be you do not require many new units. After all, this issue is also before the Planning Commission. Certain units we may not want, because we may raise the consumer goods through other ways. If it is found that promotional activity is not required, then the next question is that of financing. Here, it may be that banks are well used to financing certain established industries.

All that Government is saying is, leave the matter open for a few years. We are assuming that all the present managing agency contracts would have come to a close on a particular date, four or five years hence, four years from the assumed date of the commencement of the Act and no new formations which are not known to

us or in existence like secretaries and treasurers can come into existence without our knowledge. In both these cases, we have the situation well under control. We will have the figures and the information and we can take decisions with reference to the national interest. We do not care what happens to particular managing agents because I am quite sure that these people will be employed in the same field in some form or other. The managing agent is not going to sit at home doing nothing. He will continue to make his contribution to the industry and to the country but what we have to see is whether he makes his best contribution. He may have little money; he may have little experience and he may have little talent. All that we say is, we leave the situation open for a few years so that we shall see if any real interest of the country is going to be served.

That is the only narrow point of difference between us and Members who have suggested that we abolish the managing agency system, and those who say that we abolish the managing agency have not suggested that we do so here and now, that is to say, immediately the Act comes into force. That will pose problems of very great magnitude in organisation and enterprise. Therefore, it is a matter of two, three or four years. In that period, I have no doubt that the managing agents themselves will be, because of these uncertainties, able to improve matters. He might say, "Well, mine is an industry that is not likely to be threatened by this notification. Therefore, I might establish a good record. After all, the logic of events must speak for me. If I have or if my tribe had helped in the promotion of industry, if my tribe can show with more exact figures that the industry has been financed by it, then I expect a patriotic-minded Government to take the view that here is something which we should not destroy."

(*Rajya Sabha*, 22-9-1955, *vide Debates, Vol. X, No.* 27, *Cols.* 4055—57).

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2·88. Managing Agencies: Concentration of economic power.

At the time of the renewal of managing agencies in 1960, it would also be seen if any concentration of economic power in any industry or industries had taken place. Any managing agency then found to have done so, would run the risk of losing the office. *Shri Deshmukh* spoke as follows on this point:

In 1960 we shall have a look at the matter again. We shall see what has happened in the country. We will have taken decisions in regard to certain industries. We shall look to their records. We shall see how the economic power is being concentrated. If we find that a particular managing agent has, in spite of this sword of Democles hanging above him, gone on acquiring

economic influence to the common detriment then it would be open to us and to the Government to say that we do not think it is in the interests of the country to continue the managing agency. He has no appeal against it; that decision is final.

(Lok Sabha, 19-8-1955, vide Debates, Vol. VI, No. 19, Col. 10519).

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2·89. Managing Agencies: Check over concentration of economic power

The concentration of economic power was not the function 'solely of the managing agency system'. It could be present under all forms of management. However, it was proposed to keep this phenomenon under observation and control; and the future decisions on the approvals of individual managing agencies and on the notification of industries in which managing agency system would not exist, would be arrived at after proper study of individual cases and industries. *Shri Deshmukh* elucidated this point thus:

In regard to concentration of wealth and power, the point has already been made that what we are concerned with is the concentration of economic power to the common detriment. Probably here also there is a presumption that the larger the concentration of power, the greater the possibility of that power being to the detriment of the common good. One might admit that; but, as I said, it is not axiomatic that all this concentration of power is the function solely of the managing agency system. I myself am a believer in the infinite variety of experience and resourcefulness that is at the command of people in business; may be that it may be the other way in which power may be concentrated. I am reinforced in stating this by what I have read and what I have been told of the experience of other countries. Indeed one would not have the anti-trust laws in the United States, unless there had been concentration of power; and it is well known that the United States has no such things as managing agency system. Nevertheless there is a great deal of concentration of economic power and judging from an article in one of the bank bulletins recently, it is the view of some people in their legislatures that this concentration is growing apace, perhaps to the apprehension, not to the detriment, of the common man and those who are charged with looking after the interests of the common man. This is a problem with which we shall have to deal with all the time. But it is not necessary that one should consider that as synonymous with the managing agency system. Anyhow, we have given an indication of our general view that the greater the extent of domination of any particular interest, the greater the danger to the common interest and that is why, illogical as it is, we have given this first token of our inclination to keep this phenomenon

under observation by limiting the number of managing agencies to ten. It is a platitude, perhaps, to say that the number ten by itself does not mean anything. From one's experience of the business world, one knows that one may mean an insignificant number of companies or one may mean a very big company which is empowered to trade over half the industrial world. Nevertheless, it is an indication of our wish to keep this matter under observation, and this sword of Democles, this approval and the notification will be hanging over all the business world. I have no doubt that this will be one of the background matters, which will have to be borne in mind when we consider whether we should decide that it is in the public interest to let a particular enterprise continue to have a managing agent.

(*Lok Sabha*, 6-9-1955, *vide Debates, Vol. VII, No.* 32, *Cols.* 12401-02).

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2.90. The late *Shri M. C. Shah,* the then Minister for Revenue and Civil Expenditure, stated in the Rajya Sabha that with all the 'checks and counter-checks' provided in the law, managing agencies became new entities and their performance should in future be judged in the new context of things.

We have said that with the Government, Parliament may also be responsible for very important decisions with regard to the abolition of the managing agency system in one industry or the other. We have heard about condemnation of managing agency system by many members of this House here as well as we had heard in the other House. Very few members have supported the managing agency system. But they have forgotten the most important point that the managing agency system that they propose to allow for some time is not the present managing agency with all its abuses but the new managing agency system with checks and counter-checks whereby those managing agents who played with the monies of the public for their own interest will now rather be not in a position to do the mischief that they did in the past. The old managing agency system ends from the day this Act comes into operation and the new managing agency system in a revised form comes into being, that too for a limited period of about four years, during which time the Government will have ample opportunities to gather information, statistics, and all that is required to come to a decision as to whether in a particular industry or particular industries the managing agency system is necessary in the interest of the country. Therefore, those who have spoken against the present managing agency system will take note of this important fact. I am sure those who are managing agents today will take note of the sentiments expressed by the members of both the Houses and will just try to behave when they are on trial, to prove that they are worthy of the trust

imposed in them by the investing public, and they work in the best interest of the country in order to get a further lease of life if thought fit and necessary after a thorough enquiry.

So far as I know, the business community have recognised the fact that because of the changing time they will have to change their attitude in the management of the joint stock companies. They will have to forego the huge profits they made, not only from managing agents' commission, but from so many things—buying agency, selling agency, relatives' commission and associate's commission, and all sorts of things that they were used to. Now the time has come when they must also realise that in an independent country, they owe a duty to the country.

(*Rajya Sabha*, 28-9-1955, *vide Debates, Vol. X, No.* 32, *Cols.* 5178-79).

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2·91. Advisory Commission: Composition and functions.

The provisions of the new law lay down the formation of a high-powered advisory commission to advise Government on the various matters connected with the management of companies enumerated in Section 411 of the Act. *Shri Deshmukh* gave an idea of what Government then thought about the constitution of this commission in the following passage. In the extract given below, he has also brought out the role of the Minister in charge of the administration of the Companies Act *vis-a-vis* the advisory commission and the latter's accountability to the Parliament.

I might say, firstly,—it is almost thinking aloud—that there should be a wholetime chairman who would be either a public man with a legal background and possessing sufficient experience of finance and commerce or general administration, or, if I cannot get one— because most public men like that are actively in politics—I should like a person of the status and standing of a high court judge with extensive judicial experience and possessing a general knowledge of business matters. I should like someone, a senior member of the accountancy profession, may be either an ex-officio President of the Institute of Chartered Accountants, or if regional considerations have to be borne in mind, as they should be, someone who is suggested by that body. Then I thought there should be one representative of the business community. That is going to be difficult, because he would have to refrain from taking part in certain decisions. We shall make an effort to keep a man who may be said to be capable of representing the business world. I should think that a representative of shareholders is necessary on a body like this; whether he should come through the Stock Exchange or through the shareholders' association, I do not quite know. But one person should be of that kind. Lastly, I think we should have a representative of organised labour, because, after all, it is amply

clear here that labour is affected from time to time by the various decisions that are and will be taken under these powers. That is what I think the Advisory Commission would be. They would all be experts and each one will have his own point of view. It will be for the Minister to co-ordinate all those points of view. Probably in some cases he will find that, since the Advisory Commission will have *ex-hypothesi* agreed on his recommendations, there would have been already a fusion, a synthesis of all the points of view of those respective experts. Nevertheless, as some Hon. Members have pointed out, the Minister is the link between that Commission and the Parliament and I cannot imagine how Hon. Members are suggesting that there should be a commission with powers which are completely independent of the Minister. It will then mean that indirectly they want a commission which will be independant of themselves, that is to say, the Parliament. In other words, it seems to me that under another name, what they want to create is a Company Law Special Court. There are matters which ought to go to court which we have indicated here in the Bill; but in these other matters, I am certain that there is no room for court. In other words, these matters are not juridical; they are not capable of that kind of fine precision. For instance, the word 'usually' is used in connection with many of these clauses; so also are the words 'public interest' or 'national interest'. I say that it is (a) for Parliament and (b) for the Ministers who are responsible to Parliament, to decide from time to time what is national interest or what is public interest. This is all the more necessary in these days when one's prevailing philosophies are undergoing a change under the stress of developments in this country and elsewhere. In other words, we are living in a fast moving age and it is impossible to crystallise all these and hand it over to a commission of experts who have learnt their expertise in different fields. They cannot possibly be expected to take a comprehensive bird's eye view of prevailing philosophies. Therefore, there should be that power left to Government to intervene, trying to interpret the wishes of the Parliament in this matter, in the manner of economic policy, or industrial policy. Therefore, I am quite convinced that what we are trying to take is the best possible course under the circumstances.

(*Lok Sabha*, 7-9-1955, *vide Debates, Vol. VII, No.* 33, Cols. 12697--99).

2.92. *Shri Deshmukh* announced in the Lok Sabha that the Advisory Commission would be a permanent statutory body which, besides advising Government on the matters specifically enumerated in Section 411 of the Act, could also be asked by Government to advise on other matters which the latter might

think fit to refer to them. It was expected of the Commission to help Government in building up sound traditions for regulating the working of joint stock companies in the country and assist them in the discharge of onerous responsibilities placed on the Government by the Act. *Shri Deshmukh said*:

> I would, in this connection, draw the attention of the House to clause 409 which provides for the establishment of a statutory advisory commission to be attached to this Department (*i.e.* Department of Company Law Administration). As soon as the Act comes into force, we shall take steps to set up this advisory commission which will replace the present *ad hoc* advisory commission which, as Hon. Members may be aware, even now advises Government in certain matters relating to the working of joint stock companies. In future, the permanent advisory commission will have the duty of advising Government in respect of those matters which are specifically provided in the Bill. It will also be open to Government to refer to it any other matters for their advice. It is my hope that in course of time this advisory commission will help Government to build up sound traditions for regulating the working of joint stock companies in this country and assist the new department in the discharge of its onerous responsibilities.

(*Lok Sabha*, 10-8-1955, *vide Debates, Vol. V, No.* 13, *Cols.* 9819-20).

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2·93. Advisory Commission: Its working and relationship with Government.

The new Authority in charge of the administration of the new law and the Advisory Commission as contemplated under the provisions of Section 410 would conjointly evolve a 'body of case law and philosophy' for the proper regulation of corporate affairs. This was explained by *Shri Deshmukh* in the following words:

> What I foresee is that a body of case law will grow as a result of the close working of the Advisory Commission and the central authority. Both of them will learn; we shall learn to adjust our own ideas of remuneration and so on. As I pointed out on a previous occasion, it will all depend on what kind of Commission we have. If it happens to have rather conservative views in regard to remuneration and so on, we may have to have discussions with them, so that one may revise one's ideas of remuneration. If, on the other hand, they are ultra-progressive, one might have to say that it is better to go slow. Although there might be discussion between the Minister and the central authority on the one hand and the Advisory Commission on the other, what I expect is as a result of these discussions, a body of case law and philosophy will grow, and

we shall conjointly regulate the affairs of the companies in those respects which are in controversy today.

(*Lok Sabha*, 7-9-1955, *vide Debates, Vol. X, No. 33, Col.* 12700).

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2·94. Advisory Commission: Composition.

Later in the Rajya Sabha, *Shri Deshmukh* adverting to the subject of the constitution of the Advisory Commission said that it would not only represent the 'principal interests involved in the management of joint stock enterprise' but also would be 'such as to inspire public confidence'. He said:

> In order to assist the Central Government in the discharge of its responsibilities under the new Act, the Bill provides for the establishment of an Advisory Commission consisting of not more than five members. It is our intention, in due course, to set up a strong and competent body under the chairmanship of a suitably qualified person. I have already briefly indicated in the Lok Sabha my general ideas on this subject and I would assure Hon. Members that I shall see that the membership of the Commission is such that it not only represents the principal interests involved in the management of joint stock enterprise but is such as also to inspire public confidence.

(*Rajya Sabha*, 19-9-1955, *vide Debates, Vol. X, No.* 24, *Col.* 3469)

SECTION SIX

SECRETARIES AND TREASURERS

2·95. Secretaries and Treasurers.

The new body of secretaries and treasurers to which the Act of 1956 gave statutory recognition for the first time was described by *Shri Deshmukh* as a 'competent body of corporate managers'—

> As I said, secretaries and treasurers are nothing more than a competent body of corporate managers. They may have no financial stake in that company. The remuneration will be less than that of the managing agents. Most of the disabilities of the managing agents will apply to them. There are certain further disabilities which have been imposed on them—that is to say, they cannot nominate a director, they cannot have the right to purchase or sell goods except when authorised by a special resolution and so on. Section 383 deals with this. There are three or four such disabilities and there are certain general disabilities. But here is a way out for those who have no finance or who do not wish to engage their funds on what they regard as unsatisfactory terms; for them it is open to say: "All that we are out to do is to hire out the service of any willing person". I see nothing wrong in allowing them to continue. It is my hope and I believe it is shared by others—that in course of time, we shall have a body of secretaries and treasurers who will not arise from the traditional class. It will be open to many of our bright young men to club together and to offer their services as secretaries and treasurers. All institutions take time to grow.

(*Lok Sabha*, 19-8-1955, *vide Debates, Vol. VI, No.* 19, *Cols.* 10518-519).

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2·96. Secretaries and Treasurers: As an alternate form of management.

The institution of secretaries and treasurers was thought of as an alternative to managing agency system. This new form of management would fill up the 'void' created by the disappearance of the managing agencies. It was expected of the secretaries and treasurers to 'preserve all that was good' in the managing agency system. *Shri Deshmukh* made these points in the following words:

> I now come to the new provisions of the Bill relating to Secretaries and Treasurers. In a sense, these provisions were perhaps not necessary, because there was nothing in the Bill which would prohibit the appointment of Secretaries and Treasurers. But it was felt that that being so, there should be positive provisions in order to regulate some matters in connection with this, especially

their remuneration. The institution itself is by no means unknown to company management in this country. But, the wide vogue which the managing agency system has hitherto enjoyed in this country has stood in the way of the more extensive use of this form of management. In its essence, this institution seems to be nothing but a form of management through corporate managers. If I may say so, that Joint Committee have made a valuable contribution to the growth and development of an alternative form of management by their proposal to recognize this kind of management formally in the Companies Act. There are, of course, views both for and against this. But, if Hon. Members will carefully read the provisions of clauses 378 to 383, which deal with Secretaries and Treasurers, they will have no difficulty in appreciating the object underlying them. While the Joint Committee was anxious to prevent the concentration of economic power in the hands of a few managing agency houses with long established tie-ups with financial institutions like banks and insurance companies, it was equally anxious to ensure that no sudden vacuum was created in the organisation of trade and industry by a possible decline or disappearance of the managing agency system in some sectors by 1960. They recognise that the Secretaries and Treasurers would have no economic power. That is to say, it would be the managing agency system without its teeth. Therefore, they were concerned to develop a form of management which would preserve all that was good, as for instance, the pooling of technical competence, in the institution of managing agents by denuding it of its power to dominate the affairs of the managed companies. Secretaries and Treasurers would not be entitled by virtue of their agreements alone to have any representation on the Board of Directors. For myself, I do not see that there is any inconsistency between this anxiety to prevent the concentration of economic power and at the same time to try to retain for trade and industry those benefits of large scale and expert management and supervision which at least the best among the managing agency houses have always conferred on the companies managed by them.

(*Lok Sabha*, 10-8-1955, *vide Debates, Vol. V, No.* 13, *Cols.* 9814-15).

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2·97. Secretaries and Treasurers: Their need.

The institution of Secretaries and Treasurers was not a new one. It existed even before. All that was done in the new company law was to recognise it just in the same way as the managing agencies were recognised in 1936 and to regulate their activities under the new law. These points were explained by *Shri Deshmukh* in the following words:

It seems to me that it was always open to an individual or a firm or a body corporate to offer itself as secretaries

and treasurers, provided it modified the terms and conditions of appointment suitably so as to avoid being caught by the definition of managing agent, within the meaning of Section 2(1)(9A) of the Act. This is the present position. This position was obviously unsatisfactory and we considered it desirable to recognise the system of secretaries and treasurers formally and to regulate their activities under the new Act. It will be recalled that it was a similar consideration which induced the then Government of India in 1936 to recognise the institution of managing agents formally for the first time in the amendment of 1936 and a decision was made to incorporate the provisions relating to managing agents in that Act. It is, therefore, reasonable to claim that the provisions relating to secretaries and treasurers attempt to regulate the activities of an institution which, if left outside the scope of the new Act, would have enabled company promoters and managements to continue to carry on the activities of managing agents but with lower powers and under a different name. And that is the real distinction.

(*Lok Sabha*, 6-9-1955, *vide Debates, Vol. VII, No.* 32, *Col.* 12542).

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2·98. Secretaries and Treasurers: Their role and powers.

Clarifying the position of the new form of management, *viz.*, secretaries and treasurers, *Shri Deshmukh* said the following in the Rajya Sabha:—

Next I come to the question of Secretaries and Treasurers. Clauses 378 to 383 of the Bill deal with the new institution of Secretaries. It is new in the sense that provisions regarding it find a place for the first time in the Companies Act. As I pointed out in my speech in the Lok Sabha, there are companies even now which have Secretaries and Treasurers although the number of companies is small.

If Hon. Members will refer to the definition of 'secretaries and treasurers' in clause 2 of the Bill where they will notice that it corresponds very closely and significantly to that of managers and is substantially different from the definition of a managing agent. This follows our basic conception regarding secretaries and treasurers. In the view which we take of this new institution secretaries and treasurers will function primarily as corporate managers under the control and direction of the Boards but enjoying a large measure of autonomy subject to the general or special orders of the Board. Since secretaries and treasurers, barring the few that exist today, could be appointed only with approval of Government, the terms of their engagement with their companies will necessarily have to be scrutinised carefully by the Central Government so that they may conform

to this broad conception. In recognition of their different status and position from managing agents, secretaries and treasurers will be entitled to a lower remuneration than managing agents, that is, 7½ per cent. instead of 10 per cent.—that is the maximum—and unlike them, will not be entitled to nominate any directors on the Boards of their companies. That course of action has been specifically prohibited. Further, unless they are specifically or generally authorised by the Board, they will have no right to sell any goods or articles manufactured or produced by the company or to purchase, obtain or acquire machinery, stores, goods or materials or to sell the same when no longer required. As against these limitations on their power, and indeed it may be said as a consequence of these limitations, secretaries and treasurers will be allowed by the law to manage any reasonable number of companies, not necessarily limited to 10 per cent. as in the case of managing agents, and will not also be subject to the Central Government's power of notification terminating their appointment in any particular industry or business. I need hardly add that these countervailing advantages again follow our conception of secretaries and treasurers as corporate managers. Since it was our object to distinguish between the concentration of economic power which we felt should be held in check and the economies of large scale management which need not normally involve any such concentration of power, we felt that it was unnecessary to limit by statute the number of companies which any secretaries or treasurers could manage, nor was it in our view necessary to take any power to notify any industry or business in which there should be no secretaries and treasurers because we felt that the economies of large scale management, to the extent that such common management did not entail undesirable concentration of economic power, that is to say, to the detriment of the common good, should be made available to all industries which had numerous individual units operating in them.

(*Rajya Sabha*, 19-9-1955, *vide Debates, Vol. X, No.* 24, *Cols.* 3464—66).

* * *

2 99. Secretaries and Treasurers: Concentration of economic power.

There was no real danger of the concentration of economic power in the hands of secretaries and treasurers who would not be as much powerful as the managing agents were. As such, the question of restricting the number of companies to be managed by secretaries and treasurers did not arise. *Shri Deshmukh* said the following on this point:—

My proposition is that so far as managing agents are concerned, there is a real danger of concentration of economic

power, patronage, so on and so forth because by agreement they have a significant part to play in the direction of the policy of a company and that scheme will continue to the extent we are going to allow it to continue. In the case of secretaries and treasurers, the definition itself differs very substantially from that of the managing agents. They can be classed only with the managers, managing directors, *i.e.,* they have no special contract with the company as a whole. They can only derive their power from the Board of Directors and the general body of shareholders not by virtue of contracts like interchange of sovereignty so to speak. Now in that case, I cannot see what concentration of economic power there could be any more than in the case of managing directors. He is the servant, in every sense of the word, of the company which engages his services. The only difference is that they are a body corporate, and therefore they are able to look after the affairs of not only A, but B C D and whatever it may be. Now it is not as if I am suggesting that 40 or 50 companies is a very good number but we are here considering what is going to happen to the management of these companies which accounts for according to figures, about one-third of the paid up capital in this country.

(*Rajya Sabha*, 28-9-1955, *vide Debates, Vol. X, No.* 32, *Cols.* 5066-67).

* * *

2·*100.* Under the scheme of the new law, there were checks against concentration of economic power in the hands of managing directors, managers, secretaries and treasurers and managing agents alike. In this connection, speaking particularly about the secretaries and treasurers the then Finance Minister, *Shri C. D. Deshmukh* said:—

> There is no risk of concentration of economic power for the simple reason that he will have no power—no greater power than the managing director or the general manager.
>
> They are merely corporate managers. Therefore, the only phenomenon that you would like to guard against is the concentration of economic power in the hands of managing agents.
>
> But so far as the scheme of the Act is concerned, there are no ways open to a manager or a managing director or the secretary or treasurer to acquire and concentrate economic power. He can only say: 'we are seven, it means we can take on a number of industries to manage'. Instead of one man we allow two companies to one man—the managing director here. It may be that there are, as I said, five or six talented people and they will say 'we can manage 10, 11 or 12 companies',

whatever may the number be. I see no danger in secretaries and treasurers being allowed to manage as many companies as they can, having regard to the organisation of their particular group.

(*Lok Sabha*, 19-8-1955, *vide Debates, Vol. VI, No.* 19, *Cols.* 10519—522).

* * *

2·101. *Shri Asoka Mehta* alleged that the 'secretaries and treasurers' are likely to encourage the evil of interlocking. He said as follows:

I feel that 'secretaries and treasurers' is only a slight variation of the managing agency system and no basic change takes place. I feel that the secretaries and treasurers, far from removing, are likely to encourage the real evil of interlocking. I admit that some provisions have been made in this Bill to guard against the evil of interlocking. Full safeguards, however, have not been taken.

(*Lok Sabha*, 10-8-1955, *vide Debates, Vol. V, No.* 13, *Col.* 9836).

* * *

2·102. Secretaries and Treasurers: Cost of management.

Shri Deshmukh stated in the Lok Sabha that he favoured the turning of managing agents into secretaries and treasurers as that would reduce the cost of management:

I also said in my speech in answer to a question put by an Hon. Member, 'Do you want the managing agents to be turned into secretaries and treasurers.' 'Yes, in that case, we should have got rid of our cough without medicine'. Instead of being managing agents, they are willing to accept lowering the remuneration from 10 per cent. to 7½ per cent. and they forego even the right to nominate two directors on the board of directors. I do not see why you should want to interfere with a system of management which is not found to be dishonest or prejudicial to the interests of the company. There may be many managing agents, small men who may be doing very well by their companies but they say the future is uncertain, we are quite content with 7½ per cent. and we wish to turn ourselves into secretaries and treasurers. I wish to give them the opportunity to do so. Therefore, my object in importing it into this chapter was only to encourage, as I said earlier in my speech, all sections of the community to an increasing extent to take part in the industrial and commercial sphere.

(*Lok Sabha*, 24-8-1955, *vide Debates, Vol. VI, No.* 23, *Col.* 11133).

SECTION SEVEN

MANAGERIAL REMUNERATION

2·103. Managerial Remuneration: Percentage Limits.

On the question of prescribing a sliding scale of remuneration payable to managing agents or secretaries and treasurers, *Shri Deshmukh* spoke in the Rajya Sabha as follows. He favoured the examination of individual cases which might suggest a reduction of remuneration in some cases. The percentages of 5 per cent, 7½ per cent, 10 per cent for the managing directors, secretaries and treasurers, managing agents respectively etc. were the ceilings and not the minima. *Shri Deshmukh* explained this view by citing the example of managing director.

> Then there is this question of sliding scale and so on. I think that this is a matter which can be handled much more successfully and much more flexibly when we deal with the individual clauses, as they are bound to come up to us, because then one can go into the merits of each case and it may be that the Finance Ministry or the special department might hold that five per cent. of net profit is enormous, that five ought to be reduced to three. Therefore all these scales and formulae have their own disadvantages, and it is much better to concentrate attention on the circumstances of any particular case and then come to the necessary conclusion.

(*Rajya Sabha*, 22-9-1955, *vide Debates, Vol. X, No.* 27, *Col.* 4061).

* * *

2: *104. Shri Deshmukh* also justified the 10 per cent. remuneration criterion for the managing agents and the other percentage remunerations provided for the managing director, secretaries and treasurers, etc., in the Act. He spoke as follows:—

> I do think that in the light of all the circumstances, 10 per cent. is quite a satisfactory ceiling. I have no doubt myself that the higher the paid-up capital of a company or the higher the net profits earned, the lower will this figure be. Only time can show. I should be very much satisfied if the average comes to 8 as against 14 in some years and 16 in others. When it comes to 8, I think we can call it a day. We must also remember that in the case of many individual managing agents it will also mean a very considerable reduction. There are certain places where it ranges from 20 to 24 per cent. In those cases also, it will have to come down to 10 per cent. Here I am not influenced by any considerations of taxation but even in regard to such lambs or black sheep, there is such a thing as tempering it to the wind. Therefore, I think this is a reasonable figure to take but finally it is a matter of judgment. It is not possi-

ble for any one to swear that 10 per cent. is the right one and 7½ per cent. is wrong. The whole scheme now has been arranged round this figure. There is 5 per cent. for the managing director, 7½ per cent. for the secretary and treasurer, 10 per cent. for the managing agent and 11 per cent. overall. I myself think that this is as good a scheme as any other that could be devised.

(*Rajya Sabha*, 22-9-1955, *vide Debates*, Vol. X, No. 27, Cols. 4060-4061).

* * *

2·105. Managerial Remuneration: Rationale of 5 per cent, 7½ per cent and 10 per cent.

Shri Deshmukh explained the scheme of remuneration laid down in the provision of the Act, *viz.*, 5 per cent. for the managing directors, 7½ per cent. for the secretaries and treasurers, 10 per cent. for the managing agents, etc., in the following passage from his speech in the Lok Sabha. He impressed on the House that the scheme was consistent and reasonable.

I want to point out that this 10 per cent. compares with 5 per cent. plus salaries for the managing director and 7½ per cent. for the secretaries and treasurers. Hon. Members may ask: Why this difference? The managing director is a single individual and I think that 5 per cent. plus salary will do. He has no responsibility in regard to financing and he is just one person. He has no responsibility in regard to promotion. If he is brilliant in one direction, it is possible that he lacks in some other direction. If he is a good production engineer, possibly he is a bad financier. Now the secretary and the treasurer, as I pointed out the other day, is a corporate manager; that is to say, he is a many-sided manager. You get 6 persons and put them all together. There may be a financial expert, there may be a production engineer, there may be some one else who has passed out of the business school at Harvard or which may be established here from which he has secured a diploma or degree. There is no reason why our young people should not get together after being trained in business administration and should not start firms of corporate managers, that is to say, secretaries and treasurers. They will say that they have no money but they have the ability, that they have the talent not the talons—no money; they might offer to manage companies for people in a kind of more multi-sided excellence or competence than a single individual can and I think in consideration of that 7½ per cent. is not too high a figure for secretaries and treasurers. There is the difference of 2½ per cent. between secretaries and treasurers and managing agents. I would say that any one who puts in about 10 to 15 per cent.—I am only taking the average figure—and who is generally taking the responsibility of finding finance not only for the block capital but also working capital and in tight corners and so on and so forth, might well be said

to be entitled to another 2½ per cent. for the general responsibility that rests on him as he guarantees loans, etc. Again I think the scheme is a very equitable one considering from that point of view, apart from the relative point of view.

(*Lok Sabha*, 19-8-1955, *vide Debates, Vol. VI, No.* 19, *Cols.* 10514-515).

* * *

2·*106*. Overall Managerial Remuneration: Relaxation under section 198 for minimum remuneration.

The provision for the relaxation of minimum managerial remuneration in the event of inadequacy of profits in Section 198 of the Act, was inserted to cover cases of 'proved hardship'. *Shri Deshmukh* explained the reasons for providing for this relaxation in some detail in the Lok Sabha. He said:

> Now, I turn to an important provision introduced by the Joint Committee relating to the remuneration of directors, which also has been the subject of some controversy. The House will remember that while the original Bill provided for a ceiling on the remuneration of managing agents and also imposed a limit on the percentage of the net profits of a company which might be paid to its directors by way of a commission, there was neither any ceiling on the total remuneration of directors nor any limit on the overall managerial remuneration of a company. The Joint Committee has, therefore, inserted a new clause; clause 197, which lays down an overall limit of 11 per cent. of net profits for all types of remuneration which may be paid by a company to its top management, that is to say, managing agents, where there are managing agents, managing directors and managers. Where a company earns no profits or its profits are inadequate, the clause further provides that the overall managerial remuneration for all managerial staff should be Rs. 50,000 a year.
>
> This is the maximum which has also been prescribed in similar circumstances for managing agents under clause 352. But in that case it refers to commission, whereas here we are considering all forms of remuneration including salaries except fees earned by directors for attending the meetings of the company. As said, salaries and all other types of remuneration are included in it. I might say that the original Bill excluded salaries. But the Joint Committee thought that salaries ought to be included, as otherwise this limit which they provided was likely to be circumvented. I have received representations criticising this provision on the ground that this overall limit would be inadequate to remunerate whole time directors or managing directors of new big companies, especially in their constructional or earlier stages when obviously no profits are likely to be made. It has also been pointed out that in some industries there

might be losses even in the case of growing concerns if these industries are subjected to large fluctuations in their net profits owing to circumstances beyond their control. Therefore, it has been urged that if this provision is retained in its present form, it will be extremely difficult, if not impossible to run large-scale enterprises in this country. It has been pointed out that many big concerns require more than one whole-time managing director and in such cases, it is said, it would be impossible to attract adequate managerial talent to industry on the basis of the remuneration provided in this clause. It should be remembered that this clause will apply to managing agency companies which are public limited companies, that is to say, where there are not sufficient profits, even the directors of the managing agency would have to share this remuneration of Rs. 50,000 in a year in which, as I said, either there are no profits or there is a loss and it is possible that such managing agency companies might be maintaining executive directors—three or four, or certainly more than one. I am sure that there is a real difficulty here and that nobody in this House would desire the industrial development of the country to be hampered by inadequate remuneration to the top management of joint stock enterprises. So, the real problem here, as in other parts of the Bill, is to reconcile the legitimate requirements of trade and industry with a balanced view of what should be an appropriate level of personal income for different types of managerial talent. It is from this point of view that I have been considering this question for sometime past and I expect to move in due course a suitable amendment to this clause, which will, in my view, reconcile the two-fold objectives which I have mentioned above by conferring powers on the Central Government in cases of proved hardship to relax the provisions of this clause under suitable conditions and put proper safeguards; but the matter is open for the consideration of any other way equally suitable out of this difficulty.

(*Lok Sabha*, 10-8-1955, *vide Debates, Vol. V, No.* 13, *Cols.* 9808—09).

* * *

2·*107* The trade and industry entertained some fears about the administration of the new Section 198 of the Act. *Shri Deshmukh* referred to these fears in the Rajya Sabha and gave the necessary assurances.

I am aware that many sections of the organised trade and industry in this country, on the other hand, are apprehensive of this provision, amended though it has been in the manner which I have indicated and have expressed the fear that this clause might discourage men of quality from assuming managerial responsibilities or

make them withdraw from such responsibilities prematurely, and that potential recruits to managerial posts would, in future, be deterred from choosing a career in private trade or industry. For myself, I do not think that there is anything in the provisions of this clause, as it has been amended now, and as it is intended to be administered, which could hamper or impede honest business. I believe it is the common anxiety of all shades of responsible opinion in this country that, within the field laid down for it, private enterprise must be enabled to function efficiently and with vigour. Unless therefore, this basic policy is completely reversed, no responsible Government in the country, of whatever political complexion it might be, could possibly do anything to hinder the private sector by arbitrary exercise of the powers conferred on it under the clause.

It is in this spirit that we propose to use the authority vested in Government under this provision. It might be just as well for the critics of this provision to recognise that the principle embodied in this clause is not after all so very revolutionary. At present, prior approval is needed to all new appointments or reappointments of managing agents and managing directors and to all direct or indirect increases in their remuneration. In the context of these restrictive measures, which are already on the statute book, the further requirement laid down by clause 197 now renumbered clause 198, that where an existing company makes no profit or earns inadequate profits, it will have to apply to Government for any increase in the remuneration payable to its top management beyond Rs. 50,000 a year, does not seem to me to be a major departure from the broad pattern of control already embodied in the existing law. In any case, I feel that the manner in which the provisions of this clause are worked in future will be in a way, a test, alike of the businessmen's adaptability and of the capacity of the administration to minimise red tape and play the role of a helpful monitor to industry.

(*Rajya Sabha*, 19-9-1955, *vide Debates, Vol. V, No. 24, Cols.* 3461-62).

* * *

2·108 *Shri Deshmukh* explained the position further in the Rajya Sabha as follows:

The House may recollect that the Joint Select Committee had inserted a new clause in the Bill, that is, clause 197, providing for an overall maximum for the remuneration payable to all classes of top management in a company, that is, directors, managing agents, secretaries and treasurers and managers. This limit was fixed at 11 per cent. of the net profits of a company, inclusive of all monthly payments made by way of remuneration but exclusive of fees payable to the directors for attending

the meetings of the Board. The Committee further provided that "if in any financial year, a company has no profits or its profits are inadequate, the company may pay to any director or directors including managing or wholetime director, if any, its managing agent or secretaries and treasurers, if any, and its manager, if any, if there are two or more of them holding office in the company, to all of them together, by way of minimum remuneration, such sum not exceeding fifty thousand rupees per annum as it considers reasonable."

This is the limit fixed separately in similar circumstances for managing agents. When the Bill was before the Lok Sabha, Government received many representations from responsible business interests pointing out that the clause, as it then stood, was too rigid and might, in practice, render company management extremely difficult, particularly in the case of new companies which were not likely to make any profit for some years to come, and in the case of other companies, which were peculiarly subject to the vicissitudes of markets, and might incur losses in any particular year for reasons unconnected with their internal management. Government were satisfied that there was some force in these representations and that the best way in which relief could be given in such cases would be to arm the Central Government with the necessary power to relax this provision in suitable cases, where such relaxation was considered necessary for the efficient conduct of the business of the company.

(*Rajya Sabha*, 19-9-1955, *vide Debates, Vol. V, No.* 24, *Cols.* 3460-61).

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2·*109* The reason as to why the powers have been conferred upon the Central Government to increase the minimum remuneration under certain circumstances was explained by *Shri Deshmukh* in great detail in the Lok Sabha:

I shall not read out the whole proviso, *i.e.* proviso 10 clause 197, but the effect of it is to vest the Central Government with power to sanction an increase in minimum remuneration in certain circumstances. In my previous speeches, on one or two occasions—indeed I think in the speech with which I opened this debate in the second reading—I made a reference to this particular amendment. The history of it is this. This clause 197 was not in the original Bill and it was felt as the Joint Committee went on with its work, that just as there was an overall limit for managing agency commission, there should be some kind of an overall limit of management expenses. Therefore, in place of 10 per cent for managing agents, we put 11 per cent. In the clause that was originally brought before the Joint Committee, there was a reference

to salaries being excluded, that is to say, it was intended to cover only commission, not directors' fees or salaries. Then it was felt that if salaries were excluded, there might be circumvention of this limit of 11 per cent and it would be better to include salaries. At that time, it was realised that this might cause difficulties in certain circumstances.

Although the amount of Rs. 50,000 might be found to be sufficient and adequate in perhaps the vast majority of cases, one type of case that later on came to our notice was the case where a new company of an important character had to be started and where perhaps a managing director might have to be appointed from abroad, as having the requisite technical and administrative qualifications. Now, in such cases, it was felt that it would not be in the interests of the country if we said that under our law, the limit is Rs. 50,000 in a year in which there is no profit; because it was realised that in order to build up some of these industries, especially heavy industries, one might have to incur losses in the early years. That is a kind of necessary concomitant with the building up of heavy industry in the country. That was one case where we thought that Government should have the power, on examination of the merits of the case, to make an exception only so far as salaries were concerned. I might make it clear here at once that there is no intention by any indirect means to exceed the limit of Rs. 50,000 for managing agency commission which is laid down elsewhere in similar circumstances—clauses 347 and 252.

Another category of cases would be cases of existing companies where a large number of people—may be managers or managing directors—may be in receipt of salaries which are in excess of Rs. 50,000. What is to be done in a year in which such a company incurs a loss? Because the salaries would be paid in the beginning of the year, and the man would be out to hire only capacity and may have no other interest, and indeed no share of commission. He may not be remunerated by commission at all but only by a monthly payment. In that case, it was felt that it would create a very awkward situation if someone had to wait for about 15 months till the balance sheet was out and the dividend was declared or it was seen whether there was any profit or not. Then there would also be the awkward question of what to do if he had drawn more than would be permissible on a calculation of applying the percentage of 11 to the net profit. It was felt that there might be genuine cases of people just engaged on a contract of monthly payment, and it was considered that, barring exceptional circumstances, that is to say, if there was any voluntary surrender, there was no reason why managers or managing directors should surrender

any part of their fixed remuneration. So this would enable us to examine those cases also, although I doubt whether there would be very many cases of this kind of existing companies where there would be a loss. But the possibility of a loss cannot be ruled out by any company, however prosperous it may be, in view of the known development of economic circumstances in the world; it might be that a slump might come or a trade cycle might bring a depression and so on and so forth.

The third case is a very interesting one, that is of the managing agency company itself where it is a public company. This clause 197 would also apply to a managing agency which is a public limited company. It might be that in a particular year it is managing a certain number of companies which can only pay the minimum of Rs. 50,000 because the times are bad, as for instance, in the tea trade in 1952; yet it might be that they are maintaining a staff of wholetime directors who are paid individually a little more than Rs. 4,000 or there might be two managing directors, one being paid Rs. 2,500 and another being paid Rs. 2,500. Suppose in such a case all their receipts are only Rs. 50,000 even if that managing agency company as a public limited company has reserves out of which it could draw in order to make up the salaries of Rs. 2,500 to its two managing directors, it would be prohibited from doing so by clause 197. Now we feel that that is not a result which was thought of or anticipated by the Joint Committee, because we are not really concerned with justice as between the managing agencies, I mean the shareholders of the managing agency, and the whole-time directors, and the managing agency firms are well able to take care of themselves; so that if such a case comes to our notice, we might say, 'We have no objection. If in a particular year, you get loss by way of your minimum remuneration from your managed companies, then it is open to you to make up the salaries of your wholetime directors out of your reserves and so on."

The other case is perhaps of a sub-category where there might be two managing directors. I know of important enterprises where there are two managing directors, as for instances, the State Bank. Now it has just appointed another managing director for looking after the rural credit side and the establishment of new banks. Their total salaries might be more than Rs. 50.000 in a year; and they are paid only by salaries. In that case also, it would be possible for Government to consider whether the minimum of Rs. 50,000 could not be exceeded. That is the purpose of this particular amendment.

(*Lok Sabha*, 30-8-1958 *vide Debates, Vol. VI, No.* 26, *Cols* 31551—554).

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2·110. Managerial Remuneration: Flexible scale.

The position in the case of remuneration of managing agents and other managerial personnel was kept flexible, leaving it to the shareholders to decide the question in the first instance. Before giving approval Government would see whether what the shareholders had agreed to was reasonable. The Government was not committed to any particular scale of remuneration as such. *Shri Deshmukh* said :

> Now, one need not be committed to a particular scale. Even 6½% may be too high in a particular company. Hon. Members gave figures of certain companies in England and so on. There was 1·5 and 1·68 per cent etc. Generally the figures are below 5. It may be that in the case of a big company, even 5 per cent may be too large a remuneration. There, I think it is better to leave the matter flexible and so, I have nothing in principle against any kind of scale. As I said, we are not trying to do everything in a general way for the shareholder. The shareholder must decide the matter for himself and after he has taken a decision it would be open to us to decide it. We shall have a splendid opportunity in 1960 or even earlier, in the same manner, to see whether even what the shareholder has agreed to, is reasonable or not.

(*Lok Sabha*, 6-9-1955, *vide Debate, Vol. VII, No.* 32, *Vols.* 12399-400).

SECTION EIGHT

MISCELLANEOUS

2·111. Allotment of shares: Provisions to improve new issue market.

The new provisions relating to allotment of shares by companies had a bearing on the conditions of the new issue market. The effect of these provisions would be that the machinery of the new issue market in the country would improve. This was emphasised in the following observation of *Shri Deshmukh* in the Lok Sabha :

> As regards the allotment of shares the new provisions are designed to improve the machinery of the new issue market. They include the form and the manner in which an application for allotment of shares should be made and the regulation of commissions to be paid to the promoters and underwriters of the new issues.

(*Lok Sabha*, 28-4-1954, *vide Debates, Vol. IV, No.* 55, *Col.* 5962).

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2·112. Annual Accounts: Purpose and extent of disclosures.

The provisions of the Indian Companies Act with regard to disclosure of information in the company accounts were ahead of those of the English Company Law. In India it had long ago been recognised that the disclosures in accounts promoted sound financial practices in the corporate sector. *Shri Deshmukh* referred to the form of accounts in his speech in the Lok Sabha as follows :

> The principle of disclosure is applied to require the presentation in balance sheets and profit and loss accounts, of such additional items of information as would reveal the true financial position of a company and its state of affairs as a going concern. Unlike the United Kingdom, our law in this country has always prescribed a standard form of balance sheet. The revised form of balance sheet is set out in Part I of Schedule VI and the new requirements as to the profit and loss account are enumerated at length in Part II of that Schedule. These are in my view such as are calculated to promote sound financial practices by joint stock companies and also to ensure a higher standard of auditing of company accounts in future.

(*Lok Sabha*, 28-4-1954, *vide Debates, Vol. IV, No.* 55, *Cols.* 6963-64).

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2·113 Associate of Managing Agents: Definition.

The reasons for widening the scope of the definition of the 'associate of managing agents' were explained by *Shri Deshmukh* in the following passage from his speech in the Rajya Sabha :

> One of the basic conceptual innovations introduced in the original Bill was the definition of 'associate of managing agents'. The Company Law Committee expressed the argument underlying this new conception in the following words :
>
> "The need for the definition of 'associate of managing agent' arises from the fact that experience has shown that if the provisions of the Indian Companies Act relating to managing agents are to be adequately enforced, it is necessary to close the loophole, now provided by this category of persons. For, it is obvious that it is no use laying down restrictions on some particular activities of managing agents, if they can be legally carried on through the agency of their associate."
>
> The Joint Select Committee slightly widened the scope of this definition and extended it to cover the new institution of Secretaries and Treasurers. In the Lok Sabha, the scope of this new concept was considerably enlarged and some new categories, for instance, the relatives of partners and other associates of managing agents and of secretaries and treasurers and the members of those public companies whose membership was less than fifty, were included within this definition. The Lok Sabha felt that unless the scope of this definition was thus enlarged, it would not be able to achieve the object for which this new concept was formulated.

(*Rajya Sabha*, 19-9-1955, *vide Debates, Vol. X, No.* 24, *Cols.* 3458-59).

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2·114. The significance and purpose of extending the scope of the provisions of Section 2(3) relating to 'associates' was further explained by *Shri Deshmukh* in the following words :

> It is obviously necessary to disqualify a relative of a director or manager of a managing agency company as otherwise the provision restricting the appointment of associates, as selling agents, buying agents, etc. under clause 356 and the following clauses will be defeated. The disqualification of a relative without disqualifying the firm in which such relative holds a share—it may be a fourteen anna share—will be anomalous and will tend to nullify the object with which the disqualification is imposed. Likewise, the disqualification of a partner entails the disqualification of a firm in which the partner is a member. In counting the percentage of the total voting power in a body corporate which would entail the disqualification of the body corporate it is necessary to include the voting powers exercisable not only by the partner or partners or firm or firms, but also the voting

power exercisable by a relative or relatives and the private company or companies. The position of a partner is similar to that of a relative and the position of private companies is similar to that of firms. The inclusion of firms alone without including private companies will tend to defeat the object, as the firm may then by registering itself as a private company easily get over the disqualification.

(*Lok Sabha* 23-8-1955, *vide Debates, Vol. VI, No.* 22, *Col.* 11007-08).

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2·115. Auditors: Their position.

The provisions concerning appointment of auditors in the new company law were to ensure the independence and the integrity of the auditors. The following passage from *Shri Deshmukh's* speech in the Lok Sabha brings out the above basic objectives underlying clauses 209 to 218 of the Companies Bill (now Sections 224 to 233 of the Act).

Then, we come to clauses 209 to 218 of the Bill which deal with the appointment, qualifications, duties and powers of auditors. These provisions are intended to secure the independence and the integrity of the auditors. The two basic qualifications required of auditors are their professional competence and their integrity and independence of judgment. Hon. Members will appreciate that no law, however well designed, can ensure these qualities. But the object of the provisions of the Bill is to create conditions under which auditors would be able to discharge their statutory functions without fear or favour.

(*Lok Sabha*, 28-4-1954, *vide Debates, Vol. IV, No.* 55, *Col.* 5964).

* * *

2·116. Audit of Annual Accounts.

During the course of the discussion of the clauses relating to audit of company accounts, some members of Parliament suggested that there should be a provision for an additional audit by Government also, *i.e.* audit carried out by Government auditors. *Shri Asoka Mehta,* citing the instance of double audit system prevalent in France, spoke thus in the Lok Sabha :

As far as auditors are concerned, two of our Members have made a suggestion that there should be additional government audit. I personally feel that there is something in that suggestion; because, there is no doubt that. that kind of additional Government audit would strengthen the position and independence of the auditors. But I personally favour the system of double audit that prevails in France.

Company law should not be a bipartite law between the shareholders on the one hand and the company on the other. The workers must be permitted to come in and I think

it would be worthwhile if we amend the provisions for audit by providing that the workers also should have an opportunity to appoint their own auditors as exists in France.

(*Lok Sabha*, 10-8-1955, *vide Debates, Vol. V, No.* 13, *Col.* 9845).

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2·117. Company Meetings: Obscurities in the provisions.

The old Companies Act was obscure with regard to the calling of company meetings and procedures to be followed at them. In some ways, company managements were placed in an advantageous position *vis-a-vis* the shareholders. The provisions concerning company meetings and procedures in the new law were inserted with a view to correcting this position to some extent. This was disclosed by *Shri Deshmukh* in the following passage from his speech :

> The general effect of these clauses *i.e.* clauses 158 to 189 is set out more precisely than in the present Act—the place, the time and the manner in which a general meeting should be called and conducted in future. I am sure my friends in the House know that the present company law on this point is a prolific source of litigation. To no small extent this has been due to the uncertainties of the present law. The provisions of the Bill attempt to remove the existing obscurities and to try and hold the scales even as between company managements and shareholders in regard to the exercise of their voting rights in company meetings.

(*Lok Sabha*, 28-4-1954, *vide Debates, Vol. IV, No.* 55, *Col.* 5963).

* * *

2·118. Foreign Companies: Restrictions thereon.

During the debate some Members of Parliament suggested that some wholesome restrictions should be imposed on foreign companies working in India so that their control might rest with the Indian nationals. It was suggested that it should be made obligatory for foreign companies to take Indian directors on the board of directors. It was pointed out that some countries had incorporated suitable provisions for this purpose in the company law. *Shri Deshmukh* clarified the position on these issues in the following passage from his speech :

> As a matter of fact, if one studies the statistics, one would probably find that almost every company of note has already got an Indian director. In other words, there are certain changes which are coming about without our legislating for them. Take the case of Indianisation. There are certain countries where there are laws to the effect that a certain proportion of nationals should be recruited by foreign companies there. We do not have laws of that nature. There is no reason why we should have all that here. Similarly in the case of control, in certain countries no foreign companies are allowed to

have more than 49% in any corporation. We take, as Hon. Members opposite have said, a more pragmatic view. In the case of the oil refineries, we had to be content with less than that—about 15 or 20% to our nationals or ourselves. In each case, we consider what the demands of the situation are and then take steps accordingly either of admonition or a certain amount of pressure or tendering of advice. And we can see that these changes are coming about, and they are coming about in a way which does not frighten or scare away foreign investors. I feel that we shall be justified in the end by the results of this policy.

(*Lok Sabha*, 24-8-1955, *vide Debates, Vol. VI, No.* 23, *Cols.* 11128-29).

* * *

2·119. Government Companies.

The Companies Act contains a small set of provisions relating to Government companies. Under one of these sections Government have been given powers to make modifications, exemptions and exceptions as might be called for in particular cases.

The following excerpts from *Shri Deshmukh's* speech provide background of the provisions relating to the Government companies inserted in the Act :

Now, I wish to say a few words about Government companies. The House will remember that in the course of the debate on the motion for referring the Bill to the Joint Committee we made it clear that Government would place before the Joint Committee a special chapter containing special provisions dealing with Government companies, that is to say, companies in which Government had a defined predominant financial interest. In pursuance of this undertaking, a set of special provisions applicable to Government companies was drafted and placed before the Joint Committee for its consideration. The Committee considered this draft, but decided that it would be better to revert to the arrangement of the original Bill. It was of the view that the exemptions and modifications which the standard provisions of the Bill required in order to make them applicable to Government companies could not be framed on a uniform basis as the amount of Government's interest in, and the nature of various Government companies differed, or might differ, very widely. Each case, therefore, the Committee thought, would have to be decided on merits and the only authority which could possibly be entrusted with this function was, in their opinion, the Government. In this view, the Joint Committee suggested that only the minimum of provisions relating to Government companies should be incorporated in the Bill, leaving Government free to modify the Act relating to Government companies in the light of the requirements of each individual case

subject to the condition that every notification issued by Government exempting a Government company from, or modifying in relation to such company, the provisions of the Bill should be laid on the Table of both the Houses of Parliament as soon as possible after the issue of the notification. I trust that the House will find this arrangement generally satisfactory.

(*Lok Sabha*, 10-8-1955, *vide Debates, Vol. V, No.* 13, *Cols.* 9815-16).

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2:*120*. 'Knowingly' and 'Wilfully': Implicit Meaning.

The use of word(s) 'knowingly', 'wilfully' and 'knowingly and wilfully' in the Bill drew comments from the legal experts in Parliament. *Shri Deshmukh* explained the fine distinctions in the use of these expressions in the following passage extracted from his speech.

As regards '*knowingly and wilfully*', it is possible to hold that '*knowingly*' includes almost all the elements of '*wilfully*'. On the other hand, it is also possible to hold that '*wilfully*' has a certain element which is lacking in '*knowingly*'. Now, we are proceeding on the latter interpretation, that '*knowingly and wilfully*' has something more. In other words, '*wilfully*' imports a different sense. I would give an illustration. Suppose there is a board on Kingsway saying that speed should not exceed 30 miles per hour. There is a driver who goes at more than 30 miles an hour. May be, he cannot stop his car, may be the brakes are not working. He knows he is breaking the law. Therefore, he is knowingly doing it; he is going at more than 30 miles an hour. On the other hand, there may be another dashing driver who may say, 'I will see what the police can do at this point. I am, an important person and I will see how they stop my car'. I should say that he is breaking that particular rule knowingly and wilfully, whereas the first person would be breaking it only knowingly. Indeed, there is a third category, where you are not expected to know even whether you are breaking the law or not. As soon as you break the law, you are punished. For instance, if you happen to put your foot on the fire, it is bound to get burnt. There is no question of saying, 'I did not know it was fire'; You do not have to say, anyone who puts his foot knowingly on the fire will have his foot burnt. Therefore, there are these fine distinctions, and as I say, we are proceeding on this, and there is some support for this, that '*knowingly and wilfully*' meant a little more than '*knowingly*.'

In the case a man who commits an act, we say it is sufficient if he knows that he is committing it; there should be no further burden of proof cast on us not only to show *mens rea* but to show evil intention, that is to say *mala fide*. You know that you want to do something

wrong. Not only do you know that you are doing something wrong, but you want to do something wrong. We do not wish to cast the burden in this case on ourselves. Therefore, so far as the man who is doing an act is concerned, an officer in default who commits an act, it is sufficient for our purpose if he knowingly does it. Then we come to the man, a director who has numerous companies on his hand—shall we say?—and someone has come to him for signature. He says, 'Will you kindly sign this? This is all right'. Then the director says, 'I sign this'. He certainly signs knowingly, but does he know the nature of the transaction which he is authorised to put through? Therefore, we have been a little generous to him. We say that it should be necessary for us to prove not only that he authorises knowingly but he authorises wilfully also. Now, the Hon. Member wants 'wilfully' to be added to the first thing. On the other hand, the other Hon. Member would want us perhaps to drop *'wilfully'* in both cases. If we were to follow Shri N. C. Chatterji, I should be quite content to drop 'wilfully' from the second, so that it would only be *'knowingly'*. In that case, I say that it will be a little harder on the man who authorises and therefore, I would recommend that we retain the clause as it is.

(*Lok Sabha*, 24-8-1955, *vide Debates, Vol. VI, No.* 23, *Cols.* 11129-30).

* * *

2·121. Liquidation: Preferential Payments.

The difficulty in widening the scope of the section dealing with preferential payments was explained by *Shri Deshmukh* in the following words :

Some Hon. Members have suggested that clause 492 of the Bill, dealing with the subject of preferential payments in the event of liquidation of the company should be enlarged and tightened up to favour the claims of workers and other categories of persons, such as working journalists. In the Bill now before the House, a further provision has been made to strengthen the position of these classes, and it will have to be considered, but Hon. Members should remember that this will involve a careful balancing again of conflicting claims, and whatever decision we may ultimately take, we must take care to see that we do not gravely jeopardise the interests of creditors of the company, for that would be fatal to the growth and development of corporate enterprise in this country.

(*Lok Sabha*, 3-5-1954, *vide Debates, Vol. IV, No.* 59, *Col.* 6409).

* * *

2.122. Liquidation: Simplification of Proceedings.

The liquidation proceedings were complicated and took a long time to come to an end. These required to be simplified but scope

for simplification was rather limited. The position in this regard was explained by *Shri Deshmukh* in the following passage :

> A member has asked, whether it was not possible to simpilfy the liquidation proceedings. The answer is that it is difficult beyond a certain stage and further, the realisation of the assets of the company must, of course, await the process of law. The companies in liquidation are not generally in a solvent condition, and the liquidator faces considerable difficulty in finding funds. In order to eliminate all the delay and to ensure close supervision over the work, it has been provided that the liquidator attached to the court should be under the control of the Central Government.

(*Lok Sabha*, 3-5-1954, *vide Debates, Vol. IV, No.* 59, *Col.* 6409).

* * *

2:123. Monopolies and their control through the Company Law.

Questions relating to the working and control of monopolies were essentially outside the normal ambit of the company law. This was stressed by *Shri T. T. Krishnamachari*, the then Minister for Commerce & Industry, at the time of the debate on the Bill in 1954.

> Then the discussion has also centred very largely on the growth of monopolies provided by the company system. Perhaps it is true. It may be that the company system has provided it; it may be that it has come by means of normal process which might have a biological background, or a political or economic background, as it has in other countries. It is true that even in countries where there is no company law as such, as it exists in India or for that matter in the United kingdom, systems of monopolies of various forms have grown up.
>
> Now, I would like to reiterate one or two basic factors which were mentioned by my hon. friend the Finance Minister when he moved this Bill. The preamble that the Cohen Committee of the U.K. on company had set for themselves is worthwhile repeating. The Cohen Committee said: 'We have regarded the question of general economic policy which embraces such matters as monopolies as outside our terms of reference. The company law should, in our view, deal with companies, irrespective of their particular activities; questions of economic policy should be dealt with by legislation directed to that subject, and kept distinct from the general law governing companies.' I am happy to say that the Company Law Committee has set themselves more or less the same goal and I think it is very wisely that they have done so. In a company which has as its essential basis the question of stimulation of investment, safeguarding of investment, working of companies properly and all that sort of thing, I am afraid that projection of social objective of a nature somewhat different from the normal ambit of a company is not either wise or desirable.

(*Lok Sabha*, 1-5-1954; *vide Debates, Vol. IV, No.* 58, *Cols.* 6258-6262).

2.124. No Par Value Shares.

There was no need for this class of shares in India. The introduction of such shares would introduce a needless element of complexity. *Shri Deshmukh* spoke on this subject as follows :

> A member suggested that we should consider the question of shares of no par value. His reason for suggesting this was that this had been examined in the U.K. by a Committee over which Sir Montagu Gedge, formerly a member of the Cohen Committee, presided. This Committee recommended that the English Companies Act, 1948 should be amended to permit of issue of shares of no par value. Now, so far as the actual working of the joint stock companies is concerned, the issue of shares of no par value does not affect it. What it does affect, of course, is transactions in the stock exchanges. Now, apart from the fact that we have still to bring before the House a measure for the regulation of stock exchanges, in this country, there has been so far no demand for such shares. As far as one can see, there does not seem to be any necessity for them. It seems to me that the introduction of such shares would provide a needless element of complexity in a matter which is already complex enough. In any case at the moment there does not seem to be any strong case for authorising the issue of shares of no par value.

(*Lok Sabha*, 3-5-1954, *vide Debates, Vol. IV, No. 59, Col. 6403*).

* * *

2.125. Objects Clause.

That Government were aware of the practice of many companies in this country of starting or carrying on business unconnected with their main business was pointed out by the then Minister for Revenue and Civil Expenditure. *Shri M. C. Shah* who said that that question had several other aspects which should be considered before deciding the issue involved. He said :

> Mr. Asoka Mehta has pointed out a new development in company practice, namely, the establishment of departments or branches of activity by some companies unconnected with their principal business. Government are fully aware of these developments and they have indeed given some thought to this subject for sometime past. All the considerations which Mr. Asoka Mehta has mentioned have been very much in the mind of the Government; but there are other aspects of the question which also have to be carefully considered by the Government before they can take any action in the matter. While the Government are anxious that no company should be empowered to indulge in activities unconnected with its main business only with a view to make more money, they are also anxious to ensure that no action of theirs impedes the expansion of legitimate investments.

(*Lok Sabha*, 25-8-1955, *vide Debates, Vol. VI, No. 24, Col. 11222*).

2.126. *Shri Asoka Mehta* pointed out that by keeping the objects clause too wide, the companies could expand their activities in widely different and diverse lines. For example, a textile mill could also set up a soda ash or a jute mill, might start a cement factory. Such a development besides giving rise to bad accounting practices such as transfer of loss of one department to the profit making department/s, would lead to concentration of industries in a few hands. *Shri Mehta* explained his views on the 'object clause' in the following words:

> It has been pointed out by the Stock Exchange, Bombay, in its memorandum to the Bhabha Committee that the objects clause is generally so wide as to cover anything under the sun. We are all aware that that is the normal practice. In order that the company later on may have no difficulty in developing any kind of activity, the object clause is as wide or as prolix as possible, as the Cohen Committee has pointed out. In England, the Cohen Committee wanted that kind of flexibility should even be increased than what it is today and therefore that committee suggested that the provisions *ultra vires* should be deleted which was not agreed to by the Parliament.
>
> We do not want that a small group or a little group or a chain circle should have a kind of oligarchic control over our industrial life. But if you permit the objectives to remain as prolix as they are today, then what you are seeking to achieve through other clauses may be defeated by this clause.
>
> I find that there is a certain amount of basic contradiction between the prolixity of objectives that is permitted, the composite units that are growing up in the country, and the basic desire of all of us to see that concentration of wealth and control is increasingly reduced and some approximation to equality of opportunities is made in our industrial life.

(*Lok Sabha*, 25-8-1955, *vide Debates, Vol. VI, No.* 24, *Cols.* 11201—05).

* * *

2.127. The classification of objects into principal business and (b) auxiliary businesses was stressed *by Shri M. S. Gurupadaswamy.* He said as follows in the Lok Sabha :

> Regarding the point about the principal and auxiliary purposes for which a company has been incorporated, I may point out that it is very necessary to keep this distinction very clear. Now-a-days many companies include all sorts of things from A to Z in their memorandum of association.
>
> It is quite legitimate on their part to include all those things. But the present difficulty has arisen in this way, that we have not been able, in certain cases, to distinguish between what is a principal business and what is a subordinate or subsidiary business of a company. Sometimes

the subsidiary or auxiliary business takes the form of the principal business, and the principal type of business will be subordinate to the auxiliary business. So this has led to a lot of confusion. I would suggest that with a view to have proper clarity, it would be desirable to bring about a distinction between the principal type of business and the subsidiary business. The Bhabha Committee has, of course, dealt with this question, but it has not been able to come to any conclusion. It has not suggested any solution for this. It has simply made an observation that in certain cases, some companies have extended their activities. It felt that it would be very difficult to find a practical solution. But I feel it would be better, when we are amending the company law comprehensively, to find some solution, and we must incorporate a clause to bring about a distinction between the two, to safeguard the interests of shareholders from the activities of the management who, normally, are always tempted to extend the activities of the company to cover various things. So from the point of view of shareholders, it is highly imperative and desirable that we should incorporate a clause preventing the management, the board of directors or managing agents, whoever they are, from extending the scope of the company's activities to an illegitimate extent without the knowledge of shareholders.

(*Lok Sabha*, 25-8-1955, *vide Debates, Vol. VI, No.* 24, *Cols.* 11198-99).

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2·128. Preference Shares: Limited voting rights.

Preference shareholders' status is analogous to 'fixed creditors' and they are to be given right to vote in certain situation only when their interests are in 'jeopardy'. The position of preference shareholders has slowly got clarified through the various decisions in the U.K. during the last fifty years or so. *Shri Deshmukh* quoted from the celebrated authorities like Palmer, Gower, Levy and Ballentine and said as follows :

After 50 years of conflicting rules in courts, one seemed to have come to the conclusion that they are fixed creditors and therefore, they should not have votes except when their particular interests are in jeopardy. Then, those conditions are prescribed in clause 87 or whatever it is. But that principle we have also accepted. We say that so far as preference shares in future are concerned, that shall be the case. Now, it does not involve any injustice to anybody, because people will be putting their money into these ventures with their eyes open. But that is no reason why we should interfere with the somewhat inquiet state of rights existing as between preference shareholders and equity shareholders. There is one very important difference between the state of affairs there in the countries to which these rulings relate, and our country. Palmer, Gower, Levy and Ballantime are

speaking of a state of affairs where the law has not interfered in the matter. What they are tracing is the historical growth of the incidence of voting rights as between preference shares and equity shares. What they say in effect is that in the past, originally, it was customary to give voting rights in the same way to the preference shareholders as to equity shareholders. Then as traditions developed, and rulings came from the courts, it was realised that they were really more in the nature of fixed creditors, and therefore, they should not have those voting rights, because a greater degree of freedom should be left to the equity shareholders, who so to speak, had to pay the hazards of the situation to make decisions. As I said, that is a historical growth, but one must remember that in those countries, all these matters are ordered by the provisions of the articles. In other words, if the articles say that the voting will be this way, then it will be this way. Therefore, you will find in an article belonging to 1910 there is one kind of arrangement; in another article belonging to the year 1950, there will be another arrangement. But the law has not said that the arrangement which existed according to the articles in 1910 shall be changed so as to bring it into line with those in 1950; whereas what is suggested here, when we make a new law and when we accept that principle which affect all the existing powers of the preference shareholders, is that that seems without sufficient justification.

(*Lok Sabha*, 26-8-1955, *vide Debates, Vol. VI, No.* 25, *Cols.* 11388-89).

* * *

2:*129*. On the rights of the preference shareholders *vis-a-vis* the equity shareholder, *Shri C. C. Shah* made the following significant observations :

Those in management issue various classes of shares with two objects. Sometimes, a preference share is issued with certain extra rights with a view to attract capital; and it may be legitimate purpose to do so. But more often than not, deferred or preference share are issued not with a view to attract capital, but with a view to obtain control of the management of the company, without paying the proportionate amount of share capital which a control would require to be paid. It is the second kind of abuse which has necessitated this kind of clauses.

As regards preference shares, the position of the preference shareholder is a little anomalous. He is neither a creditor, because the rights of a creditor are more than those of a preference shareholder, nor is he an ordinary shareholder. He is a shareholder because he does risk his capital. But the risk to his capital as also to his income is qualified or limited. As regards preference shareholder, the practice used to be at one time that

the rights were given to him along with ordinary shareholders of all kinds. Another time, we found the practice of complete denial of rights to preference shareholders of any voting at all on any subject or at any time. The healthier practice in recent times has been to give them qualified rights of voting on particular occasions when their dividends are in arrears or their interests are likely to be affected.

It is very difficult to adjust or balance between the rights of preference shareholders and the rights of equity shareholders. The preference shareholder is at all times in a conservative frame of mind, and does not like to take any risk to his capital and therefore, he acts as a brake upon any expansion of the particular industry in which he has put his capital. On the contrary, the equity shareholder desires development of the industry for which he has put his money because he wants higher returns for his capital. In this delicate position between the two classes of shareholders, the healthier practice in recent times has been for all good managements to give the preference shareholders qualified rights of voting. And these provisions which we have now embodied in this Bill recognise that healthier practice and give legislative sanction to it.

(*Lok Sabha*, 25-8-1955, *vide Debates, Vol. VI, No.* 24 *Cols.* 11291—93).

* * *

2·130. 'Private Ltd.': Significance of addition of these words to the name of a company.

The addition of the word 'Private' to the name of private companies would be of great advantage to the lay public in that it would assist them to know whether it is a private or public company they are dealing with, and to take the necessary safeguards. This point was made clear by *Shri Morarka* in the following words:

Hitherto, the difference between private companies and public companies was not known *ex-facie*, on the face of it. For the first time the Bill provides that a private limited company will have to add to its name the word 'private'; that means, now onwards, you would be able to know merely by seeing the name whether a company is private or public. This would be of great advantage. It would be of great benefit to the public when they deal with any company to know whether it is private or public, because in the two cases their rights and obligations are different.

(*Lok Sabha*, 13-8-1955, *vide Debates, Vol. V, No.* 15, *Cols.* 10088-98).

* * *

2·131. Prospectus: Provisions for additional disclosures.

The Company Law Committee had said that recent developments in company law have emphasised the importance of the fullest

possible disclosure in prospectuses or statements in lieu of them, and in the balance sheets and profit and loss accounts of companies. For, it is now increasingly recognised that full disclosure of the facts and circumstances relating to the formation of a company and the manner in which it is worked as reflected in its accounts, constitutes the best safeguard against abuse of the processes of the law by unscrupulous company promoters and managers.' That the provisions requiring additional disclosures in company prospectuses were inserted in the present Act to achieve the purposes mentioned above was emphasized by *Shri Deshmukh* in the following extract from his speech in the Lok Sabha :

> In regard to company promotion and formation, the provisions of the Bill make considerable changes in the matter of prospectuses, allotment of shares, terms and conditions on which companies may be floated and the share structure of companies. The main changes concerning prospectus are contained in clauses 50 to 59 read with Schedule II to the Bill. This Schedule replaces the present Section 93 of the Companies Act and greatly enlarges the particulars that will have to be disclosed in future in a company prospectus. For example, the Bill now requires that previous consent of experts should be obtained before their views can be reproduced in prospectus issued to the public and that in the case of companies managed by managing agents, the subscribed capital of the managing agency company should also be disclosed. Similarly, disclosure is required of all material contracts into which a company promoter may have entered or proposes to enter on behalf of the company. As regards the allotment of shares the new provisions are designed to improve the machinery of the new issue market. They include the form and manner in which an application for allotment of shares should be made and the regulation of commissions to be paid to the promoters and underwriters of the new issues.
>
> The effect of all these provisions under the general head relating to company formation is to impose on directors and others concerned with the promotion of a company a much higher degree of vigilance than is at present required of them and to place the investors in a much better position than they are at present to assess the intrinsic merits of a new issue. It is not necessary for me to argue the point whether the principle of disclosure underlying these provisions would or could adequately safeguard the interests of prospective investors or ensure sound company floatation. But I am sure all Hon. Members will agree that disclosure of essential information is the first step in this direction and cannot by any means be said to impose an unreasonable burden on private enterprise or their promoters."

(*Lok Sabha*, 23-4-1954, *vide Debates, Vol. IV, No.* 55, *Cols.* 5961-62).

2·132. Regulation and control of affairs of companies: Need for data.

Though it was urged that further regulations in many a direction should be provided for in the provisions of the new law, it was, however, not quite possible to do so as uptodate data were not available. A body of uptodate statistics was expected to be collected by the research section of the new department. An indication of this arrangement was given by *Shri Deshmukh* in the following passage :

> In many matters, the House has felt that we ought to go further in this matter of regulation. One difficulty that we have is that we are not really sure of possessing uptodate facts. It is true that from time to time evidence has been tendered and recorded by associations or by the expert committees. There are *ad hoc* enquiries made and so on. I have conceded that, in the past, administration of Company Law has not been very active and alert: indeed one would be justified in saying that it has been dormant.
>
> Now we hope to be able to change all that. I hope we shall have a good research department associated with this new department and in a few years' time we shall have a good mass of data which will be more accurate, on which one could proceed and formulate policies and measures connected with the regulation of companies.

(*Lok Sabha*, 2-9-1955, *vide Debates, Vol. VI, No.* 29, *Cols.* 11949-50).

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2·133. Section 408: Oppression of minority shareholders.

While discussing the powers conferred on Government to prevent oppression of the shareholders' rights by the management, *Shri Deshmukh* made a specific reference to Clause 407 of the Companies Bill (which now stands as Section 408 in the Act) in the following words :

> The other new clause 407 inserted by the Joint Committee which again in some quarters has been described as an innovation inconsistent with the basic principles of company legislation, empowers the Central Government to appoint not more than two persons being members of the company to hold office as its directors for such period not exceeding three years as the Central Government may prescribe. It will be noticed that before such appointments can be made, the Central Government must be satisfied, on the application of the members of the company holding not less than one-tenth of the total voting power, that it is necessary to make such appointments in order to prevent the affairs of the company from being conducted in a manner which is oppressive to any members of the company or is prejudicial to its interests.

What I would like the House to notice in this connection is that the power conferred on the Central Government is one which would be exercised by it entirely at its discretion and only if it is satisfied that it is necessary for it to exercise the power for the purposes mentioned. If Hon. Members will refer to the other provisions inserted in the Bill for safeguarding the interests of minority shareholders, provisions which have received general support, they will notice that all that this new clause 407 does is to extend to the executive Government some of the extensive powers which under the other clauses have already been conferred on the courts.

(*Lok Sabha*, 10-8-1955, *vide Debates, Vol. V, No.* 13, *Cols.* 9806-07).

* * *

2·134 Section 615: Collection of Information and Statistics from Companies.

The purpose and use of the powers under Section 615 of the Act to direct companies to furnish information or statistics was explained by *Shri Deshmukh* in the following passage taken from his speech in the Rajya Sabha on the 19th September, 1955:

This was inserted by the Lok Sabha during the concluding stages of the consideration of the Bill in that House. This clause empowers the Central Government to direct companies to furnish such information or data as it may require in order to enable it to discharge its duties and responsibilities under the Bill effectively and expeditiously. It was not possible under the other provisions of the Bill or of any other Act relating to the collection of statistics to be sure of obtaining the information or data which the Central Government might require in respect of the management or working of any individual company. Clause 615 fills this lacuna in this Bill. Our past experience in the administration of the Companies Act discloses the necessity for a provision of this type and I need hardly repeat the assurance which I gave in the Lok Sabha that this power would be used only where it is considered essential to do so for the efficient administration of the new Act.

(*Rajya Sabha*, 19-9-1955, *vide Debates, Vol. X, No.* 24, *Col.* 3468).

* * *

2·135. Shareholders' Associations: Their formation

The question of protection of shareholders' interests and of formation of shareholders' associations in the country was raised by Dr. H. N. Kunzru in Rajya Sabha during the debate in the following words:

I would like to refer again to some of the questions that I raised during the consideration stage. I suggested that the Department of Company Law Administration should regard it as one of its important duties to encourage the establishment of shareholders' associations wherever

they did not exist and to strengthen such existing associations as are not in good condition. I also suggested that for the attention of the shareholders, the Department should consider the practicability of publishing literature which will enable them to understand the real position and to discharge their functions effectively. This Bill gives greater power to the shareholders than they ever possessed. It has also strengthened the position of directors. It has provided for a measure of internal control and it is necessary to see that this internal control is exercised so efficiently that the purpose that we all have in view may be achieved.

(*Rajya Sabha*, 28-9-1955, *vide Debates, Vol. X, No.* 32, *Cols.* 5152-53).

2.136. The Government was sympathetic to Dr. Kunzru's suggestions and late *Shri M. C. Shah* gave the following assurance in this regard:

My friend, Dr. Kunzru suggested some steps about encouraging shareholders' associations. We have that in view, and I can assure my Hon. friend that all possible steps would be taken to see that the existing shareholders' associations are strengthened and the new ones are formed.

(*Raya Sabha*, 28-9-1955, *vide Debates, Vol. X, No.* 32, *Col.* 5182).